

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KRISTY DUMONT; DANA
DUMONT; ERIN BUSK-SUTTON;
REBECCA BUSK-SUTTON; and
JENNIFER LUDOLPH,

Plaintiffs,

v.

NICK LYON, in his official capacity
as the Director of the Michigan
Department of Health and Human
Services; and HERMAN MCCALL,
in his official capacity as the
Executive Director of the Michigan
Children's Services Agency,

Defendants.

No. 17-cv-13080-PDB-EAS

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MAG. ELIZABETH A.
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**DEFENDANTS NICK LYON
AND HERMAN MCCALL'S
MOTION TO DISMISS**

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**DEFENDANTS NICK LYON AND HERMAN MCCALL'S
MOTION TO DISMISS**

Defendants Nick Lyon and Herman McCall move this Court under Fed. R. Civ. P. 12(b)(1) and (6) to dismiss the Complaint, for the reasons below and explained more fully in the attached Brief.

1. When Plaintiffs lack standing under U.S. Const., art. III, § 2, the Court does not have subject matter jurisdiction and the complaint must be dismissed under Fed. R. Civ. P. 12(b)(1). *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Carver v. Bunch*, 946 F.2d 451, 452 (6th Cir. 1991). Plaintiffs primarily allege they have been injured as taxpayers.

(Doc. 1, Cplt., ¶¶ 64, 69, 74, 79, Pg. ID 17-19.) But because Plaintiffs challenge discretionary executive activity, they lack taxpayer standing and their claims should all be dismissed.

2. This Court should also dismiss a complaint that fails to state a claim upon which relief can be granted. Fed. R. Civ. P. 12(b)(6). A Rule 12(b)(6) motion should be granted when “it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.” *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984). Here, Plaintiffs fail to state a claim because they challenge facially neutral contracting policies that neither establish a religion nor discriminate. And, because there is no fundamental right to be a foster parent, the challenged contracting policy survives the applicable rational basis test.

3. “Courts may also consider public records, matters of which a court may take judicial notice, and letter decisions of governmental agencies.” *Jackson v. City of Columbus*, 194 F.3d 737, 745 (6th Cir. 1999), abrogated on other grounds, *Swierkiewicz v. Sorema N. A.*, 534 U.S. 506 (2002). Similarly, courts may consider exhibits attached to the pleadings that are central to the claims without converting the motion

to one for summary judgment. *Kaminski v. Coulter*, 865 F.3d 339, 344 (6th Cir. 2016).

4. Pursuant to Local Rule 7.1(d), on December 14, 2017, counsel for Defendants contacted Plaintiffs' counsel to determine if they would concur in the relief sought, providing an explanation of the nature of and basis for the motion, in addition to the opportunity to confer. Plaintiffs' counsel refused to concur, thereby necessitating this motion.

Respectfully submitted,

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Dated: December 15, 2017

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2017, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

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TABLE OF CONTENTS

	<u>Page</u>
Table of Contents	i
Index of Authorities.....	iii
Concise Statement of Issues Presented	viii
Controlling or Most Appropriate Authority.....	viii
Introduction.....	1
Statement of Facts	2
Foster care and adoption in Michigan	2
2015 P.A. 53.....	4
Facts alleged.....	6
Argument.....	8
I. Plaintiffs do not have standing.....	8
A. Because Plaintiffs challenge discretionary executive activity, they lack taxpayer standing.	9
B. Plaintiffs also fail to satisfy the injury, causation, and redressability requirements for standing.....	12
1. The Dumonts and Busk-Suttons cannot show injury redressable by this Court.....	12
2. Ms. Ludolph lacks standing for failure to allege any redressable injury.	14
3. Plaintiffs lack standing to assert the claims of foster children.	15
II. Plaintiffs fail to state a claim upon which relief may be granted.	16

A. Plaintiffs fail to state a claim under the Establishment Clause (Count I). 16

B. Plaintiffs fail to state a claim based on the Equal Protection Clause (Count II). 19

1. Plaintiffs fail to challenge state action. 19

2. Michigan’s foster and adoption system satisfies the rational-basis test. 22

Conclusion and Relief Requested..... 25

Certificate of Service 26

INDEX OF AUTHORITIES

Page

Cases

<i>Adult Video Ass’n v. Dep’t of Justice</i> , 71 F.3d 563 (6th Cir. 1995)	8, 15
<i>Corporation of Presiding Bishop of Jesus Christ of Church of Latter-day Saints v. Amos</i> , 483 U.S. 327 (1987)	viii, 16
<i>Cutter v. Wilkinson</i> , 544 U.S. 709 (2005)	18
<i>DaimlerChrysler Corp. v. Cuno</i> , 547 U.S. 332 (2006)	9
<i>Doremus v. Bd. of Educ. Of Hawthorne</i> , 342 U.S. 429 (1952)	10
<i>Edmonson v. Leesville Concrete Co.</i> , 500 U.S. 614 (1992)	viii, 20
<i>Flast v. Cohen</i> , 392 U.S. 83 (1968)	1, 9, 10
<i>Gillette v. United States</i> , 401 U.S. 437 (1971)	18
<i>Hein v. Freedom from Religion Foundation, Inc.</i> , 551 U.S. 587 (2007)	viii, 10, 11
<i>Heller v. Doe by Doe</i> , 509 U.S. 312 (1993)	23
<i>Kach v. Hose</i> , 589 F.3d 626 (3d Cir. 2009)	20
<i>Kowalski v. Tesmer</i> , 543 U.S. 125 (2004)	15

<i>Lemon v. Kurtzman</i> , 403 U.S. 602 (1971)	viii, 16, 17
<i>Lintz v. Skipski</i> , 807 F. Supp. 1299 (W.D. Mich. 1992)	20
<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555 (1992)	viii, 2, 8, 12
<i>Massachusetts v. Mellon</i> , 262 U.S. 447 (1923)	9
<i>Mitchell v. Helms</i> , 530 U.S. 793 (2000)	19
<i>Molnar v. Care House</i> , 574 F. Supp. 2d 772 (E.D. Mich. 2008)	21
<i>Rendell-Baker v. Kohn</i> , 457 U.S. 830 (1982)	viii, 21
<i>Renfro v. Cuyahoga Cty Dep't of Human Servs</i> , 884 F.2d 943 (6th Cir. 1989)	12
<i>S&M Brands Inc. v. Cooper</i> , 527 F.3d 500 (6th Cir. 2008)	14
<i>Scarborough v. Morgan Cnty. Bd. of Educ.</i> , 470 F.3d 250 (6th Cir. 2006)	viii, 22
<i>Schlesinger v. Reservists Comm. to Stop the War</i> , 418 U.S. 208 (1974)	10
<i>Smith v. Gristina</i> , 2012 WL 247017, at *3 (S.D.N.Y. Jan. 6, 2012)	22
<i>Smith v. Jefferson County Bd. of School Comm'rs</i> , 641 F.3d 197 (6th Cir. 2011)	16
<i>Smith v. Org. of Foster Families for Equality and Reform</i> , 431 U.S. 816 (1977)	12

<i>Storino v. Borough of Point Pleasant Beach</i> , 322 F.3d 293 (9th Cir. 2003)	10
<i>Trinity Lutheran Church of Columbia, Inc. v. Comer</i> , 137 S. Ct. 2012 (2017)	19, 24
<i>U.S. v. Decastro</i> , 682 F.3d 160 (2d Cir. 2012)	13
<i>U.S. v. Hayes</i> , 515 U.S. 737 (1995)	9, 15
<i>Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.</i> , 454 U.S. 464 (1982)	10
<i>Walz v. Tax Comm’n of the City of New York</i> , 397 U.S. 664 (1970)	18
<i>Warth v. Seldin</i> , 422 U.S. 490 (1975)	15
<i>Whitmore v. Arkansas</i> , 495 U.S. 149 (1990)	8, 15
<i>Wilder v. Bernstein</i> , 645 F. Supp. 1292 (S.D.N.Y. 1986), <i>aff’d</i> , 848 F.2d 1338 (2d Cir. 1988)	24
<i>Will v. Michigan Department of State Police</i> , 491 U.S. 58, 71 (1989)	14
<i>Wolfe v. Perry</i> , 412 F.3d 707 (6th Cir. 2005)	15
<i>Wolotsky v. Huhn</i> , 960 F.2d 1331 (6th Cir. 1992)	20
<i>Young</i> , 209 U.S. 123 (1908)	14

<i>Zelman v. Simmons-Harris</i> , 536 U.S. 639 (2002)	19

Statutes

42 U.S.C. § 2000e-1	16
42 U.S.C. § 290kk-1	5
42 U.S.C. § 604a(d)(1).....	22
Mich. Comp. Laws § 400.14f	4
Mich. Comp. Laws § 712A.13a(1)(e).....	3
Mich. Comp. Laws § 712A.13a(9).....	2
Mich. Comp. Laws § 722.111.....	4
Mich. Comp. Laws § 722.111(1)(c)	4
Mich. Comp. Laws § 722.124e.....	4
Mich. Comp. Laws § 722.124e(1)(e)	5
Mich. Comp. Laws § 722.124e(1)(g)	5
Mich. Comp. Laws § 722.124e(1)(i)	21
Mich. Comp. Laws § 722.124e(2)	5, 6
Mich. Comp. Laws § 722.124e(3)	5
Mich. Comp. Laws § 722.124e(7)(b)	6
Mich. Comp. Laws § 722.124f	4, 6
Mich. Comp. Laws § 722.124f(1)	6
Mich. Comp. Laws § 722.124f(1)(a).....	6
Mich. Comp. Laws § 722.124f(1)(b).....	6
Mich. Comp. Laws § 722.954(1)	4

Regulations

Mich. Admin. Code R. 400.12201	4

CONCISE STATEMENT OF ISSUES PRESENTED

1. Whether Plaintiffs have taxpayer standing when the actions they challenge do not derive from a specific legislative appropriation for a specific legislative purpose.
2. Whether Plaintiffs have Article III standing when the injuries they allege flow from third parties and are not redressable here.
3. Whether Plaintiffs have stated a claim under the Establishment Clause when Defendants have not established a preference for religion but have advanced the secular purpose of attempting to provide a greater number of loving families for foster children.
4. Whether Plaintiffs have stated a claim under the Equal Protection Clause when Plaintiffs challenge private conduct, not government action, and Defendants' actions are reasonably related to the rational purpose of providing a greater number of loving families for foster children.

CONTROLLING OR MOST APPROPRIATE AUTHORITY

Authority: *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992); *Hein v. Freedom from Religion Foundation, Inc.*, 551 U.S. 587, 602-03 (2007); *Lemon v. Kurtzman*, 403 U.S. 602 (1971); *Corporation of Presiding Bishop of Jesus Christ of Church of Latter-day Saints v. Amos*, 483 U.S. 327 (1987); *Edmonson v. Leesville Concrete Co.*, 500 U.S. 614, 619 (1992); *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982); *Scarborough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 260-61 (6th Cir. 2006).

INTRODUCTION

The State of Michigan faces a monumental task: finding loving families to care for the more than 13,000 children who have been determined to be dependent due to maltreatment and now require foster care and/or adoption services. Identifying families to care for these children requires many public and private agencies, faith-based and non-faith-based, working diligently to recruit foster and adoptive parents.

Maximizing the number and diversity of agencies can help that effort by increasing connections to communities and options for child placement.

Michigan's 2015 child-protection law, and Defendants' implementation of it, further that goal. If faith-based agencies are not allowed to operate according to their religious principles, they will shut down, which can have the effect of reducing the number of available families. Such a result will do nothing to help a single child find a home.

Plaintiffs do not directly challenge the 2015 child-protection law. Instead they attack the law's implementation. But there is no basis for allowing this lawsuit to proceed.

To begin, Plaintiffs lack Article III standing either under the test for taxpayer standing of *Flast v. Cohen*, 392 U.S. 83 (1968), or the usual

standing test of *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992).

That is because they challenge executive, not legislative appropriations, and claim no redressable injury. In addition, Plaintiffs fail to state a claim on either Count I or Count II. Michigan's adoption law and practices are designed to ensure there is no religious entanglement of government and religion—they do not establish a religion. And the Equal Protection Clause applies only to government conduct, while this lawsuit attacks the conduct of private actors. Accordingly, Defendants respectfully ask that the Court grant their motion to dismiss.

STATEMENT OF FACTS

Foster care and adoption in Michigan

This case concerns Michigan's foster and adoption system, which is administered by the Department of Health and Human Services. The Department, led by Defendant Director Nick Lyon, administers the system through the Michigan Children's Services Agency, led by Defendant Dr. Herman McCall, Ed.D. This system provides temporary care and custody to children when a court finds that children have no legal guardian or have been neglected or abused. Mich. Comp. Laws § 712A.13a(9). There are more than 13,000 children in foster care,

about 300 of whom are available for adoption.¹ That care is provided in foster-family homes, child-care institutions, and relative homes. Mich. Comp. Laws § 712A.13a(1)(e).

Child Placing Agencies, or CPAs, are licensed to provide services at 108 locations throughout the state, including the counties where Plaintiffs reside.² Three of the Plaintiffs, the Busk-Suttons and Ms. Ludolph, live in Detroit. (Doc. 1, Cplt., ¶¶ 20-21, Pg. ID 6.) Wayne County contains 19 CPAs³, 10 of which are in Detroit.⁴ The other two Plaintiffs, the Dumonts, live in Dimondale, in Eaton County near the border with Ingham County. (Doc. 1, Cplt., ¶ 19, Pg. ID 6.) Although Eaton County does not contain any CPAs, Ingham County contains six.⁵

¹ http://www.michigan.gov/mdhhs/0,5885,7-339-73971_7117---,00.html (last accessed September 27, 2017).

² See <https://w2.lara.state.mi.us/CWL-Search>. Results obtained by selecting “Child Placing Agency, Private” under the “Facility Type” menu (last accessed November 20, 2017).

³ *Id.* Results obtained by selecting “Child Placing Agency, Private” under the “Facility Type” menu and “Wayne” under the “County” menu (last accessed November 20, 2017).

⁴ *Id.* Results obtained by selecting “Child Placing Agency, Private” under the “Facility Type” menu and entering “Detroit” in the “City” menu (last accessed November 20, 2017).

⁵ *Id.* Results obtained by selecting “Child Placing Agency, Private” under the “Facility Type” menu and “Eaton” and then “Ingham” under the “County” menu (last accessed November 20, 2017).

In addition, the Department itself offers foster care services in Eaton, Ingham and Wayne Counties.

The Department licenses and regulates CPAs. See generally Mich. Comp. Laws § 722.111 *et seq.*; Mich. Admin. Code R. 400.12201 *et seq.* The Department has discretion to contract with licensed CPAs. Mich. Comp. Laws § 400.14f. Under the terms of the contracts, the Department pays CPAs for the services they render. One of the many tasks undertaken by government and non-government CPAs is to license foster families. Mich. Comp. Laws § 722.954(1); Mich. Comp. Laws § 722.111(1)(c).

2015 P.A. 53

Plaintiffs make several allegations about 2015 House Bills Nos. 4188, 4189 and 4190, which were enacted as 2015 P.A. 53 and are codified at Mich. Comp. Laws §§ 722.124e and 722.124f. (Doc. 1, Cplt., ¶¶ 38-50, Pg. ID 11-14.) Plaintiffs do not challenge P.A. 53's constitutionality, but they do challenge Defendants' compliance with it.

In enacting P.A. 53, the Legislature concluded that “[c]hildren and families benefit greatly from the adoption and foster care services pro-

vided by faith-based and non-faith-based child placing agencies. Ensuring that faith-based child placing agencies can continue to provide adoption and foster care services will benefit the children and families who receive publicly funded services.” Mich. Comp. Laws § 722.124e(1)(g).⁶ Accordingly, P.A. 53 guarantees CPAs “the right to free exercise of religion under both the state and federal constitutions,” including “the freedom to abstain from conduct that conflicts with an agency’s sincerely held religious beliefs.” Mich. Comp. Laws § 722.124e(1)(e). Section 124e provides that, “to the fullest extent permitted by state and federal law,” a CPA is not required to provide any “service” that conflicts with its sincerely held religious beliefs, and the government may not take adverse action against a CPA on that basis. Mich. Comp. Laws § 722.124e(2), (3).

P.A. 53 does not preclude the Department from taking adverse action against a CPA *after* the agency accepts a Department referral for services related to a particular child or particular individuals. Mich.

⁶ Federal law similarly recognizes that religious organizations may participate in providing services and, when they do, retain their free exercise rights. 42 U.S.C. § 290kk-1.

Comp. Laws § 722.124f.⁷ A CPA accepts a referral by either submitting to the Department a written agreement to perform services related to the particular child or particular individuals referred by the Department, or engaging in any other activity that results in the Department being obligated to pay the agency for the services related to the particular child or particular individuals referred by the Department. Mich. Comp. Laws § 722.124f(1)(a), (b).

A CPA may decline to accept a referral if acceptance of the referral will result in a conflict with the CPA's sincerely held religious beliefs contained in a written policy, statement of faith, or other document adhered to by the CPA. Mich. Comp. Laws §§ 722.124e(2), 722.124f(1).

Facts alleged

Plaintiffs ask this Court to enjoin Defendants from contracting with any CPAs that follow their religious beliefs with respect to marriage. The Dumonts and the Busk-Suttons, both same-sex couples, allege that they would like to adopt. (Doc. 1, Cplt., ¶¶ 59, 67, Pg. ID 16,

⁷ The definition of “services” does not include “foster care case management and adoption services provided under a contract with the department.” Mich. Comp. Laws § 722.124e(7)(b).

17.) With 108 CPA locations to choose from, including many in their local areas (as noted above), these Plaintiffs contacted *only* faith-based agencies that, based on their religious beliefs, work with married, opposite-sex couples: St. Vincent Catholic Charities and Bethany Christian Services. (*Id.* ¶¶ 61-63, 68, Pg. ID 16-18.) Both couples claim standing as taxpayers. (*Id.* ¶¶ 64, 69, Pg. ID 17, 18.)

St. Vincent Catholic Charities and Bethany Christian Services are both licensed CPAs, and the Department has contracted with them to provide foster care and adoption services. (See generally, SVCC Adoption Contract, Ex. 1; SVCC Adoption Contract, Amd. 1, Ex. 9; SVCC Foster Care Contract, Ex. 2; SVCC Foster Care Contract, Amd. 5, Ex. 3; BCS Adoption Contract, Ex. 4; BCS Adoption Contract, Amd. 1, Ex. 11; BCS Foster Care Contract, Ex. 5; BCS Foster Care Contract, Amd. 4, Ex. 6; BCS Foster Care Contract, Amd. 5, Ex. 7.) Under the contracts, the CPAs agree to comply with the Department's non-discrimination statement with respect to contract services provided, and that statement includes protection based on sexual orientation. (Ex. 1, § 2.9(c), p. 5; Ex. 3, § 2.9(c), p. 3; Ex. 4, § 2.9(c), p. 5; Ex. 7, § 2.9(c), p. 3.) But as Michigan law requires, the contracts also expressly incorporate

and protect a CPA's rights under P.A. 53. (Ex. 1, § 2.9(e), p. 5; Ex. 4, § 2.9(3), p. 5; SVCC Foster Care Contract, Amd. 3, § 2.9(h), p 8, Ex. 8; BCS Foster Care Contract, Amd. 3, § 2.9(h), p 8, Ex. 10.)

The fifth plaintiff, Ms. Ludolph, is a former foster child who has also served as a foster parent. (Doc. 1, Cplt., ¶¶ 71-72, Pg. ID 18.) She also alleges taxpayer standing and believes Defendants' policies could have prevented her from finding her family two decades ago because her foster father is an atheist. (*Id.* ¶ 73, Pg. ID 18.) Ms. Ludolph overlooks that Defendants contracted with faith-based CPAs then, too.

ARGUMENT

I. Plaintiffs do not have standing.

For standing to exist, a plaintiff must show: (1) a “concrete, particularized, and actual or imminent” injury; (2) that is “fairly traceable” to the defendant’s alleged conduct; and (3) which the court could redress by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The injury necessary to invoke constitutional standing must be concrete and palpable, not merely abstract or hypothetical. *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990); *Adult Video Ass’n v. Dep’t of Justice*, 71 F.3d 563, 567 (6th Cir. 1995). Generalized

grievances “against allegedly illegal governmental conduct” are insufficient. *U.S. v. Hayes*, 515 U.S. 737, 743 (1995).

A. Because Plaintiffs challenge discretionary executive activity, they lack taxpayer standing.

Plaintiffs allege they have been injured as taxpayers and “object to the use of taxpayer funds to underwrite and endorse religious beliefs to which they do not subscribe.” (Doc. 1, Cplt., ¶¶ 64, 69, 74, 79, Pg. ID 17-19.) But because Plaintiffs challenge discretionary executive activity, as opposed to legislatively mandated spending, they lack taxpayer standing.

Litigants generally do not have standing based on their status as taxpayers. *Massachusetts v. Mellon*, 262 U.S. 447, 487 (1923). That is because any particular taxpayer’s burden is “comparatively minute and indeterminable.” *Id.* The rules apply equally to state taxpayers.

DaimlerChrysler Corp. v. Cuno, 547 U.S. 332, 343-45 (2006).

In *Flast v. Cohen*, 392 U.S. 83 (1968), the Supreme Court created a narrow exception to this rule—though only in the context of an Establishment Clause challenge. There is no such thing as taxpayer standing for an Equal Protection challenge. *Storino v. Borough of Point*

Pleasant Beach, 322 F.3d 293, 298 n.2 (9th Cir. 2003) (citing Erwin Chemerinsky, *Federal Jurisdiction* § 2.3.5 (3d ed. 1999)).

The *Flast* exception applies where a taxpayer alleges the unconstitutionality of a legislative act under the taxing and spending clause, where the challenged enactment exceeds constitutional limitations on the taxing and spending power. 392 U.S. at 102–04. This exception is narrow and applies only where there is a specific legislative appropriation to implement a legislative mandate. *Hein v. Freedom from Religion Foundation, Inc.*, 551 U.S. 587, 602-03 (2007). An expenditure that results from *executive* discretion—like those here—does not qualify. *Id.* at 605. Taxpayers also lack standing to challenge issues of religious disagreement rather than “direct dollar-and-cents” injuries, *id.* at 601 (citing *Doremus v. Bd. of Educ. Of Hawthorne*, 342 U.S. 429, 433 (1952)), or to challenge executive actions that may aid religious groups, *id.* at 605-06, (citing *Valley Forge Christian Coll. v. Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 479 (1982) and *Schlesinger v. Reservists Comm. to Stop the War*, 418 U.S. 208, 228 (1974)).

Here, Plaintiffs challenge discretionary executive action—the Department’s practice of contracting with faith-based CPAs. (Doc. 1, Cplt., ¶¶ 64, 69, 74, 79, Pg. ID 17-19.) Such contracts result in the Department paying the CPAs for their services. But there is no specific legislative appropriation, and there is no particular legislative mandate, such as requiring the Department to contract with particular CPAs (or, for that matter, any CPAs at all). Rather, the Department pays for the services of CPAs out of general appropriations for such purposes. Indeed, whether the Department contracts with a particular CPA is a matter of discretion. Mich. Comp. Laws § 400.14f.⁸ As a result, all Plaintiffs lack taxpayer standing. *Hein*, 551 U.S. at 608.

⁸ The Department “may contract with a private individual or agency to administer a program created under this act or to perform a duty of the family independence agency under this act.” Mich. Comp. Laws § 400.14f.

B. Plaintiffs also fail to satisfy the injury, causation, and redressability requirements for standing.

1. The Dumonts and Busk-Suttons cannot show injury redressable by this Court.

The Dumonts and Busk-Suttons claim that the policies of third-party CPAs prevent them from being foster or adoptive parents. This fails to establish Article III standing for four independent reasons.

First, there is no right to be a foster care parent. *Smith v. Org. of Foster Families for Equality and Reform*, 431 U.S. 816, 844-47 (1977); *Renfro v. Cuyahoga Cty Dep't of Human Servs*, 884 F.2d 943, 944 (6th Cir. 1989). In the absence of a right, Plaintiffs cannot show an injury that is concrete and particularized, or even actual or imminent. *Lujan*, 504 U.S. at 560–561.

Second, the injuries alleged are not “fairly traceable” to Defendants’ alleged conduct. *Lujan*, 504 U.S. 560-61. The Dumonts and the Busk-Suttons base their claims on the actions of third-party CPAs, specifically the allegation that these CPAs do not place foster children with same-sex couples. (Doc. 1, Cplt., ¶¶ 78-79, 83-86, Pg. ID 19, 21.) The alleged injuries are not “fairly traceable” to Defendants, but to these third-party CPAs. Indeed, the alleged injuries cannot be “fairly

traceable” to the Department because the contracts between the Department and the CPAs prohibit CPAs from discriminating against potential applicants.

Third, Plaintiffs’ alleged injuries are a result of their own conduct, or lack thereof. For instance, out of the 108 total CPAs in Michigan, including 25 CPAs within the same counties as the CPAs they contacted, Plaintiffs decided to call only two, faith-based CPAs, and when they were referred elsewhere, simply stopped. (Doc. 1, Cplt., ¶¶ 61, 62, 68, Pg. ID 16-18.) In addition, though having a foster license might help Plaintiffs to adopt from the foster system, they fail to allege that they even applied for a foster license. *U.S. v. Decastro*, 682 F.3d 160, 164 (2d Cir. 2012) (party who never applied for concealed weapon license lacks standing to challenge licensing laws).

Finally, Plaintiffs claims are not redressable. Plaintiffs ask this Court to stop Defendants from contracting with faith-based agencies that, for religious reasons, only work with married, opposite-sex couples. If the Court so orders, the two CPAs with whom Plaintiffs wish to work—and many other faith-based CPAs—will not provide any services at all. At that point, Plaintiffs would have to work with a

different CPA, and they can do that now. Accordingly, they lack standing.

2. Ms. Ludolph lacks standing for failure to allege any redressable injury.

Ms. Ludolph's claims are even more tenuous. Other than her generalized grievance as a taxpayer, her asserted injuries are based on her experience in the foster system. (Doc. 1, Cplt., ¶¶ 71, 73, Pg. ID 18-19.) But she entered the foster system 20 years ago. (Doc. 1, Cplt., ¶¶ 70-71, Pg. ID 18.) The prospective declaratory and injunctive relief she seeks—which she is limited to under the Eleventh Amendment⁹—would not redress any injury. (Doc. 1, Cplt., ¶¶ A-D, Pg. ID 21-22.)

Ms. Ludolph also fails to allege an injury fairly traceable to the Department. She speculates that the alleged actions of third-party CPAs “could have prevented her from finding her [foster] family.” (Doc. 1, Cplt., ¶ 73, Pg. ID 18.) This is an abstract, hypothetical, generalized grievance against the practices of third-party CPAs (that, incidentally, existed at the time of Ms. Ludolph's adoption as well). It is wholly

⁹ *Ex Parte Young*, 209 U.S. 123, 155-156 (1908); *Will v. Mich. Dept. of State Police*, 491 U.S. 58, 71 (1989); *S&M Brands v. Cooper*, 527 F.3d 500, 507 (6th Cir. 2008).

insufficient to establish standing. *Hayes*, 515 U.S. at 743; *Whitmore*, 495 U.S. at 155; *Adult Video Ass'n*, 71 F.3d at 567.

The injuries Ludolph alleges are also not “fairly traceable” to Defendant’s alleged conduct, but to those of the third-party CPAs. And the limitations period for any such claim has long passed.¹⁰

3. Plaintiffs lack standing to assert the claims of foster children.

Plaintiffs also claim that the Department’s actions “harm children” by denying access to foster families. (Doc. 1, Cplt., ¶¶ 79, 86, Pg. ID 19, 21.) But prospective foster families can work with any CPA at any location; the only way that allegation is true is if a family insists it must work with a particular CPA and that CPA, for any reason, declines.

From a legal perspective, however, Plaintiffs cannot assert the alleged rights of other individuals in any event. *Kowalski v. Tesmer*, 543 U.S. 125, 129 (2004); *Warth v. Seldin*, 422 U.S. 490, 499-502 (1975); *Smith v. Jefferson County Bd. of School Comm’rs*, 641 F.3d 197, 206

¹⁰ Claims under 42 U.S.C. § 1983 are subject to a three-year statute of limitations. *Wolfe v. Perry*, 412 F.3d 707, 714 (6th Cir. 2005).

(6th Cir. 2011). Accordingly, Plaintiffs cannot rely on alleged generalized harm to children to establish standing.

II. Plaintiffs fail to state a claim upon which relief may be granted.

A. Plaintiffs fail to state a claim under the Establishment Clause (Count I).

To analyze Defendants' Establishment Clause claim, the Court must apply the three-part test established in *Lemon v. Kurtzman*, 403 U.S. 602 (1971). That test considers whether a government act has (1) "a secular legislative purpose," (2) a "principal or primary effect" that "neither advances nor inhibits religion," and (3) "an excessive government entanglement with religion." *Id.* at 612-13 (cleaned up). The outcome here is controlled by the Supreme Court's application of the *Lemon* test in *Corporation of Presiding Bishop of Jesus Christ of Church of Latter-day Saints v. Amos*, 483 U.S. 327 (1987).

Amos involved a challenge to the religious exemption in Section 702 of the Civil Rights Act, which "exempts religious organizations from Title VII's prohibition against discrimination in employment on the basis of religion." 42 U.S.C. § 2000e-1. The plaintiff, a former Church employee who was fired because he lacked a certificate verifying that he

was a Church member, sued for religious discrimination and claimed that § 702's religious exemption violated the Establishment Clause.

Under *Lemon's* first prong, the Court recognized that a government act's purpose need not be "unrelated to religion." *Id.* at 334. The "purpose" requirement prevents the government from abandoning neutrality and promoting a particular point of view in religious matters." *Id.* "It is a permissible legislative purpose," said the Court, "to alleviate significant government interference with the ability of religious organizations to define and carry out their religious missions." *Id.* at 335. Accordingly, § 702 had a secular purpose.

Regarding the second prong, the Court held that § 702 did not have the primary purpose of advancing religion. All the government was doing was acting with the "proper purpose of lifting a regulation that burdens the exercise of religion." *Id.* at 338.

Finally, the Court held that § 702 did not impermissibly entangle church and state. To the contrary, the exemption "effectuates a more complete separation of the two and avoids the kind of intrusive inquiry into religious belief" that would otherwise be required. *Id.* at 339.

So too here. P.A. 53 and Defendants' implementation of it have a secular purpose because they seek to "alleviate" interference with faith-based agencies' ability to "define and carry out their religious missions." Defendants are not seeking to advance religion, but to create a provider environment that allows faith-based *and* non-faith-based CPAs to flourish, for the benefit of children. The legislation and Defendants' conduct avoid religious entanglement by not putting Defendants in the position of evaluating the religious or secular merits or demerits of a CPA's reason for declining a case referral.

That result is consistent with a long line of Supreme Court cases upholding religious exemptions. *E.g.*, *Cutter v. Wilkinson*, 544 U.S. 709 (2005) (upholding religious accommodations for prison inmates over Establishment Clause challenge); *Walz v. Tax Comm'n of the City of New York*, 397 U.S. 664 (1970) (upholding religious exemption from a municipal property tax); *Gillette v. United States*, 401 U.S. 437 (1971) (upholding religious exemption from the military draft).

To the extent Plaintiffs argue that Defendants are paying money to faith-based agencies with whose religious beliefs Plaintiffs disagree, there is still no Establishment Clause violation. The Supreme Court

has consistently approved public funding of religious entities under the *Lemon* test where funding advances a secular purpose, its primary effect is neither to advance nor inhibit religion, and the funding does not foster an excessive entanglement of religion. *E.g.*, *Mitchell v. Helms*, 530 U.S. 793 (2000) (upholding public aid to schools); *Zelman v. Simmons-Harris*, 536 U.S. 639 (2002) (upholding school-voucher program). In fact, if Defendants adopted Plaintiffs’ desired policy and conditioned faith-based CPAs’ participation in the foster system on the agencies giving up their religious principles, those CPAs would likely file suit against Defendants. *E.g.*, *Trinity Lutheran Church of Columbia, Inc. v. Comer*, 137 S. Ct. 2012, 2021-22 (2017) (government violates free exercise when it conditions participation on a religious entity’s willingness to surrender its religious principles). Accordingly, Plaintiffs fail to state a claim under Count I.

B. Plaintiffs fail to state a claim based on the Equal Protection Clause (Count II).

1. Plaintiffs fail to challenge state action.

“The Constitution’s protections of individual liberty and equal protection apply in general only to action by the government.”

Edmonson v. Leesville Concrete Co., 500 U.S. 614, 619 (1992). Private action is not circumscribed. *Id.* That is a problem for Plaintiffs here, because they are challenging decisions of private CPAs, not the State.

To attribute a CPA's conduct to the government, Plaintiffs would have to satisfy one of three tests: "(1) the public function test, (2) the state compulsion test, [or] (3) the symbiotic relationship or nexus test." *Wolotsky v. Huhn*, 960 F.2d 1331, 1335 (6th Cir. 1992) (cleaned up). Here, only the third test is relevant, because adoption and foster care have never been "exclusively reserved" to the state (Michigan allows private adoption), and Michigan does not exercise the type of coercive power over CPAs that amounts to compulsion, especially when the CPAs have the freedom to follow their religious principles. *See, e.g., Lintz v. Skipski*, 807 F. Supp. 1299, 1306 (W.D. Mich. 1992) (Foster parents are not "state actors" for purposes of a § 1983 suit.).

In analyzing the nexus test, "the inquiry is not on whether the state exercises control over a putative state actor as a general matter, but whether the state has exercised control over the particular conduct that gave rise to the plaintiff's alleged constitutional deprivation." *Kach v. Hose*, 589 F.3d 626, 649 (3d Cir. 2009). CPAs do not fit this

test. The contract between the Department and a CPA does not require a CPA to take all cases that are referred.

The mere receipt of public funding paired with some state regulation is not enough to make a CPA a state actor. For example, in *Rendell-Baker v. Kohn*, 457 U.S. 830 (1982), the Supreme Court held that a private school did not engage in state action when firing an employee, even though (1) the state referred the school's students, (2) 90% of the school's operating budget came from public funds, (3) a majority of the school's contracts were with government entities, and (4) the government required the school to comply with many state and local regulations as a condition to receive the public funds. The Court focused on the facts that the school could refuse to accept any student, and the government did not coerce, control, or influence the school's decisions to discharge an employee. *Id.* at 841-42. P.A. 53 incorporates this standard. Mich. Comp. Laws § 722.124e(1)(i).

Other courts have reached the same conclusion. *E.g.*, *Molnar v. Care House*, 574 F. Supp. 2d 772, 784-86 (E.D. Mich. 2008) (private agency that prevented and treated child abuse and neglect was not a state actor, even though agency received government referrals, received

public funding, and state officials were on an advisory committee); *Smith v. Gristina*, 2012 WL 247017, at *3 (S.D.N.Y. Jan. 6, 2012) (foster care providers are not state actors) (citing additional cases), Ex. 12; *see also* 2003 ND Op Atty Gen L-18 (NDAG), 2003 WL 1829244 (North Dakota Attorney General concluded that a private agency was not a state actor when deciding whether to accept a placement), Ex. 13; 42 U.S.C. § 604a(d)(1) (religious agencies paid with federal funds to provide social services retain private, independent status).

In sum, Plaintiffs are in effect complaining about the actions of private actors, whom Plaintiffs have not sued, and whose actions are not attributable to Defendants. As a result, Plaintiffs fail to state a claim under the Equal Protection Clause.

2. Michigan's foster and adoption system satisfies the rational-basis test.

Because the Sixth Circuit has held that sexual orientation is not a protected class for equal-protection purposes, *Scarborough v. Morgan Cnty. Bd. of Educ.*, 470 F.3d 250, 260-61 (6th Cir. 2006), Plaintiffs concede that rational-basis review applies to their equal-protection claim, arguing that the Departments' decision to contract with faith-based

CPAs serves “no legitimate government interest.” (Compl, p 21, ¶ 86.)

To begin, Plaintiffs are again challenging the conduct of third-party CPAs, not the Department. That challenge is not actionable.

Nevertheless, if they had standing, Plaintiffs’ burden would be tremendously high. A governmental classification must be affirmed “so long as it bears a rational relation to some legitimate end.” *Romer v. Evans*, 517 U.S. 620, 631 (1996). Under rational-basis review, courts presume the constitutionality of the classification at issue and affirm it if there is any rational relationship between the classification and a legitimate government interest. *Heller v. Doe by Doe*, 509 U.S. 312, 319 (1993).

Significantly, the government does not need to express its rationale for the classification, nor does it need to produce any evidence in support of it. *Id.* at 320. Rather, the government action survives an “equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.” *Id.* (cleaned up). The classification survives review even where the fit between the rule and the governmental interest is imperfect or rough. *Id.* at 321. And the party challenging the classification has the burden

“to negative every conceivable basis which might support it, whether or not the basis has a foundation in the record.” *Id.* at 320 (cleaned up).

Here, the state’s interest in providing and maintaining a quality system for foster and adoptive placement and care for children is not only legitimate, but compelling. *See, e.g., Wilder v. Bernstein*, 645 F. Supp. 1292, 1336–37 (S.D.N.Y. 1986), *aff’d*, 848 F.2d 1338 (2d Cir. 1988) (“The State and City clearly have a legitimate interest in ensuring the health and safety of children in foster care institutions, particularly those children in the State's official custody.”) Nor is there any reasonable dispute that the children in that system retain certain rights, including Free Exercise. *Wilder*, 645 F. Supp. 2d at 1326.

The Department’s practice of contracting with third-party CPAs is a rational means of achieving the legitimate state interest. Contracting with both faith-based and non-faith based CPAs opens the door to more services and more families, a benefit vigorously espoused by Plaintiffs. In addition, as noted above, the State has a legitimate interest in not violating the U.S. Constitution by requiring CPAs to relinquish their religious beliefs to be providers. *Trinity Lutheran*, 137 S. Ct. at 2021-22. Plaintiffs’ Equal Protection claim fails to state a claim.

CONCLUSION AND RELIEF REQUESTED

The people of Michigan chose to maximize child-placing-provider options when they passed legislation to continue Michigan's longstanding practice of contracting with faith-based CPAs while ensuring that every person seeking to adopt has the ability to do so. Allowing faith-based and non-faith-based agencies to serve and be advocates for Michigan's foster children is a "win-win" solution, and there is no legal basis to invalidate it. Defendants' motion to dismiss should be granted.

Respectfully submitted,

Bill Schuette
Attorney General

/s/ Joshua S. Smith
Assistant Attorney General
Attorneys for Defendants
Health, Education & Family
Services Division
P.O. Box 30758
Lansing, MI 48909
(517) 373-7700
Smithj46@michigan.gov
P63349

Dated: December 15, 2017

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2017, I electronically filed the above document(s) with the Clerk of the Court using the ECF System, which will provide electronic copies to counsel of record.

/s/ Joshua S. Smith
Assistant Attorney General
Attorneys for Defendants
Health, Education & Family
Services Division
P.O. Box 30758
Lansing, MI 48909
(517) 373-7700
Smithj46@michigan.gov
63349

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KRISTY DUMONT; DANA
DUMONT; ERIN BUSK-SUTTON;
REBECCA BUSK-SUTTON; and
JENNIFER LUDOLPH,

No. 17-cv-13080-PDB-EAS

Plaintiffs,

HON. PAUL D. BORMAN

v.

MAG. ELIZABETH A.
STAFFORD

NICK LYON, in his official capacity
as the Director of the Michigan
Department of Health and Human
Services; and HERMAN MCCALL,
in his official capacity as the
Executive Director of the Michigan
Children's Services Agency,

Defendants.

**INDEX OF EXHIBITS TO DEFENDANTS NICK LYON AND
HERMAN MCCALL'S MOTION TO DISMISS**

Exhibit 1. SVCC Adoption Contract

Exhibit 2. SVCC Foster Care Contract

Exhibit 3. SVCC Foster Care Contract, Amd. 5

Exhibit 4. BCS Adoption Contract

Exhibit 5. BCS Foster Care Contract

Exhibit 6. BCS Foster Care Contract, Amd. 4

Exhibit 7. BCS Foster Care Contract, Amd. 5

Exhibit 8. SVCC Foster Care Contract, Amd. 3

Exhibit 9. SVCC Adoption Contract, Amd. 1

Exhibit 10. BCS Foster Care Contract, Amd. 3

Exhibit 11. BCS Adoption Contract, Amd. 1

Exhibit 12. *Smith v. Gristina*, No. 11-cv-2371, 2012 WL 247017
(S.D.N.Y. Jan. 6, 2012)

Exhibit 13. 2003 ND Op Atty Gen L-18 (NDAG), 2003 WL 1829244

EXHIBIT 1

State of Michigan
 Department of Health and Human Services
 Bureau of Purchasing (BOP)
 PO Box 30037, Lansing, MI 48909
 Or
 235 S. Grand Avenue, Suite 1201, Lansing, MI 48933



AGREEMENT NUMBER: A17-33001
 Between
THE STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
 And

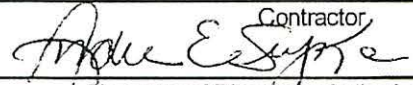
CONTRACTOR		PRIMARY CONTACT	EMAIL
St. Vincent Catholic Charities		Andrea Seyka	seykaa@stvcc.org
CONTRACTOR ADDRESS			TELEPHONE
2800 West Willow, Lansing, MI 48917-1833			517-323-4734
STATE CONTACT	NAME	TELEPHONE	EMAIL
Contract Administrator	Cathe Hoover	517-241-8817	hooverc3@michigan.gov
OCP Analyst	Dawn Akers	517-335-6366	akersd@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Adoption		
GEOGRAPHIC AREA	Statewide		
INITIAL TERM	EFFECTIVE DATE*	EXPIRATION DATE	AVAILABLE OPTION YEARS
3 years	October 1, 2016	September 30, 2019	2, one year options
MISCELLANEOUS INFORMATION			
ESTIMATED AGREEMENT VALUE AT TIME OF EXECUTION		\$1,150,000.00	
AGREEMENT TYPE	Unit Rate		

*The effective date of this Agreement shall be the date listed in the "Effective Date" box above, or the date of Michigan Department of Health and Human Services (MDHHS) signature below, whichever is later.

The undersigned have the lawful authority to bind the Contractor and MDHHS to the terms set forth in this Agreement. Section 291 of the fiscal year 2016 Omnibus Budget, PA 84 of 2015, requires verification that all new employees of the Contractor and all new employees of any approved subcontractor, working under this Agreement, are legally present to work in the United States. The Contractor shall perform this verification using the E-verify system (<http://www.uscis.gov/portal/site/uscis>). The Contractor's signature on this Agreement is the Contractor's certification that verification has and will be performed. The Contractor's signature also certifies that the Contractor is not an Iran linked business as defined in MCL 129.312.

FOR THE CONTRACTOR:

St. Vincent Catholic Charities
 Contractor

 (Signature of Director or Authorized Designee)
 ANDREA E. SEYKA
 Print Name
 9/12/16
 Date

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND
 HUMAN SERVICES


 Signature of Director or Authorized Designee
 Kim Stephen
 Print Name
 9-27-16
 Date

This Agreement will be in effect from the date of MDHHS signature through September 30, 2019. No service will be provided and no costs to the state will be incurred before October 1, 2016, or the effective date of the Agreement, whichever is later. Throughout this Agreement, the date of MDHHS signature or October 1, 2016, whichever is later, shall be referred to as the begin date.

<u>Agreement Period</u>	<u>Amount</u>
Begin date through September 30, 2019	\$1,150,000.00
Total Amount:	\$1,150,000.00

1. PROGRAM REQUIREMENTS

1.1. Client Eligibility Criteria

- a. The Contractor shall perform activities for Michigan permanent wards that are Title IV-E funded and Michigan Children's Institute (MCI) wards for which adoption is the plan or for children from a participating Inter-State Compact (ICPC) state's child welfare system that has been referred for adoption services to Michigan through ICPC. Any exceptions to this criteria must be approved by the MDHHS Central Office Adoption Program Manager.

b. Determination of Eligibility

Determination of eligibility will be made by MDHHS.

1.2. Referral Process

- a. Adoption referrals are initiated by MDHHS. Contractors may not transfer adoption cases to another child placing agency. After acceptance of an adoption referral, the Contractor may not transfer the case back to the Department, except upon the written approval of the County Director, the Children's Services Agency Director, or the Deputy Director.

If MDHHS makes a referral to a child placing agency for adoption services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral within seven working days of receipt of the referral from foster care. Any reasons given for declining a referral may be documented in MiSACWIS.

- b. At the time of referral to a private agency, MDHHS shall provide that agency with a referral packet as prescribed in Section 210 of the Adoption Services Manual (ADM 210).
- c. When an eligible child is photo-listed on MARE and the Contractor notifies

the local MDHHS county office that the Contractor has a studied and approved available family, MDHHS shall send a copy of the case file to the Contractor within ten (10) working days of receipt of notification.

2. CONTRACTOR RESPONSIBILITIES

2.1. Email Address

The Contractor authorizes MDHHS to use the contact information below to send Agreement related notifications/information. The Contractor shall provide MDHHS with updated contact information if it changes.

Contact email address: seykaa@stvcc.org

2.2 Requests for Information

The Contractor may be required to meet and communicate with MDHHS representatives and from time to time MDHHS may require that the Contractor create reports or fulfill requests for information as necessary to fulfill the MDHHS' obligations under statute and/or Dwayne B. v. Snyder, et al., 2:06-cv-13548, herein referred to as the Implementation, Sustainability, and Exit Plan (ISEP).

The Contractor shall make available to MDHHS copies of any outside reviews, non-redacted FOIA requests, or audits relating to the contracted program.

2.3 Geographic Area

The Contractor shall provide services described herein in the following geographic area: Statewide

2.4 Licensing Requirements

The MDHHS Division of Child Welfare Licensing (DCWL) is the licensing agency for Child Placing Agencies (CPA). A license is issued to a certain person or organization at a specific location, is non-transferable, and remains the property of the Department. Therefore, a child placing agency must be established at a specific location.

The Contractor shall ensure that, for the duration of this agreement, it shall maintain a license for those program areas and services that are provided for in this Agreement. If the Contractor fails to comply with this section, MDHHS may terminate this Agreement for default.

The Contractor is licensed to provide service under this agreement under the following license number: CB330201019

2.5. Location of Facilities

The Contractor shall provide services described herein at the following location(s):

2800 West Willow, Lansing, MI 48917

2.6 Program Focus and Statement

The Contractor shall perform activities for Michigan permanent wards that are Title IV-E funded and Michigan Children's Institute (MCI) wards for which adoption is the plan or for children from a participating Inter-State Compact (ICPC) state's child welfare system that has been referred for adoption services to Michigan through ICPC.

Reimburse licensed child placing agencies through a current MDHHS adoption contract at specific rates for the legal placement and finalization of an adoption for an eligible child. Per diem payments for cases referred to the contractor by MDHHS for adoption services can be charged a maximum of \$3000.00 per child. The total amount paid for the per diem rate is deducted from the applicable placement rate when the child is placed by the court in an adoptive home. Reimbursement for contract agency staff's successful completion of applicable training provided by the Office of Workforce Development and Training is included.

The Contractor shall provide MDHHS with copies of their Adoption Program Statement. The program statement shall comply with the requirements of MDHHS Division of Child Welfare Licensing standards and MDHHS policy. The Contractor shall inform MDHHS of any changes made to the program statement at any point during the term of this Agreement and provide copies of the new statement to MDHHS within 60 days.

2.7 Reserved

2.8. Credentials

The Contractor shall assure that appropriately credentialed or trained staff under its control, including Contractor employees and/or subcontractors, shall perform functions under this Agreement.

2.9 Compliance Requirements

Except as stated in e. below, the Contractor shall comply with the following requirements:

- a. The Contractor shall comply with all applicable MDHHS policy and MDHHS policy amendments including fingerprint-based criminal history policy. MDHHS policies and MDHHS policy amendments/bulletins are published on the following internet link: <http://www.michigan.gov/mdhhs-manuals>.
- b. Throughout the terms of this Agreement, the Contractor shall ensure that it provides all applicable MDHHS policy and MDHHS policy amendments to social service staff. The Contractor shall ensure that social service staff complies with all applicable requirements.
- c. The Contractor shall comply with the MDHHS non-discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs or disability.

The above statement applies to all applications filed for adoption of MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

- d. The Contractor accepts a referral from MDHHS under this Agreement by doing either of the following:
 - 1) Submitting to MDHHS a written agreement to perform the services related to the particular child or particular individuals that the Department referred to the Contractor, or
 - 2) Engaging in any other activity that results in MDHHS being obligated to pay the Contractor for the services related to the particular child or particular individuals that the Department referred to the Contractor.
- e. Under 1973 PA 116, as amended by 2015 PA 53, the Contractor has the sole discretion to decide whether to accept or not accept a referral from MDHHS. Nothing in this Agreement limits or expands the application of the Public Act.

Adoption referrals are initiated by MDHHS. Contractors may not transfer adoption cases to another child placing agency. After acceptance of an adoption referral, the Contractor may not transfer the case back to the Department, except upon the written approval of the County Director, the Children's Services Agency Director, or the Deputy Director.

If MDHHS makes a referral to a child placing agency for adoption services pursuant to a contract with the child placing agency, the child

placing agency must accept or decline the referral within seven working days of receipt of the referral from foster care. Any reasons given for declining a referral may be documented in MiSACWIS.

- f. The contractor shall ensure all directives and services ordered by the court are completed to the satisfaction of the court within the timeframes ordered.
- g. The Contractor shall participate in random moment time studies (RMTS). An RMTS is a process where participants are emailed short surveys and asked to indicate what they were doing at an assigned time. The time study is required to determine the amount of time spent on various activities. Based on these results, MDHHS determines the amount that can be charged to various funding sources.
- h. Compliance with MDHHS Implementation, Sustainability, and Exit Plan

The Contractor shall ensure compliance with all applicable provisions and requirements of Dwayne B. v. Snyder, et al., 2:06-cv-13548, Implementation Sustainability and Exit Plan.

i. Additional Compliance Provisions

- 1) 1984 Public Act, 114, as amended, being M.C.L. 3.711 *et seq.*, Interstate Compact on the Placement of Children.
- 2) 1939 Public Act 288, Chapter X, being M.C.L. 710.1 *et seq.*, Michigan Adoption Code.
- 3) 1984 Public Act 203, as amended, being M.C.L. 722.951 *et seq.*, Michigan Foster Care and Adoption Services Act.
- 4) The Social Security Act as amended by the Multiethnic Placement Act of 1994 (MEPA); Public Law 103-382, and as amended by Section 1808 of the Small Business Job Protection, the Interethnic Adoption Provision (IEAP).
- 5) The Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.*
- 6) P.L. 110-351, known as the Fostering Connections to Success and Increasing Adoptions Act of 2008.
- 7) Social Security Act, 42 USC 671(a)(20)
- 8) Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Security Policy located on the following link: <https://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>

2.10 Services to be Provided

a. General Adoption Responsibilities

- 1) Place the child for adoption under the provisions of this Agreement or

assist in the child's placement by another private agency or MDHHS local office.

- 2) The Contractor that has the identified adoptive family shall be the agency to perform adoptive activities including: placement, case management, supervision and court related requirements.
- 3) When the Contractor has an identified adoptive family for a child under supervision of another agency the Contractor shall work cooperatively with the child's agency in coordinating and sharing responsibility for pre- placement activities and associated costs for transportation and other case services.
- 4) When a placement for adoption disrupts or a finalized adoption dissolves within eighteen (18) months of the date of the order for placement or finalization the Contractor shall be, unless ordered or directed otherwise by the Court or MDHHS, responsible to provide full adoption services for the child/youth as detailed in this contract. The responsible contractor is defined as the Contractor that had adoption planning responsibilities for the child when the initial adoption placement occurred. The exception shall be in a contested case where a child is placed in an adoptive home against the recommendation of the contractor.
- 5) Provide guidance to the child's foster parent in preparation of the child for adoption or in facilitating a transfer of the child's attachment to the adoptive parents.
- 6) In instances where the child's agency has performed pre-placement activities for the adoptive family's agency, the adoptive family's agency shall provide the child's agency with a copy of the court order placing the child in the adoptive home within thirty (30) working days, after receipt of said order.
- 7) The Contractor shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children. This shall include photo listing on the MARE website, networking with other private agencies in determining availability of resource families and other recruitment activities that are statewide and national in nature. The Contractor shall respond to and actively work with, prospective adoptive parents outside of the State of Michigan.
- 8) The Contractor shall maintain documentation of completion of the above listed requirements in the child's adoption case file for review by MDHHS.

b. Adoption, Recruitment, Orientation and Training

- 1) The Contractor shall develop and implement a plan for adoptive home recruitment, retention, and support consistent with the MDHHS DCWL Licensing Standards specific to the Contractor's license specified in Section 2.4.
- 2) The Contractor shall provide adoption recruitment activities in collaboration with other private agencies and MDHHS local offices to focus on children registered on Michigan Adoption Resource Exchange (MARE).
- 3) The Contractor shall work cooperatively with other contracted adoption agencies, MDHHS and trained adoptive parents to provide orientation and training. It is recommended that adoptive parent peer mentors be matched to prospective and new adoptive parents. The Contractor shall retain in the case record verification of training provided to the adoptive family including but not limited to:
 - a. Type of training provided
 - b. Date training provided
 - c. Subject material covered during training
- 4) The Contractor shall involve youth in the planning and organizing of adoption recruitment events.
- 5) The Contractor shall develop supports for children and youth moving to permanency through adoption. Best practice research indicates that support groups, peer mentors, informational sessions and individual counseling are effective tools. Developing appropriate rituals and recognition for the transitions experienced shall be part of the adoption process.
- 6) The Contractor shall be responsible for providing information to the prospective adoptive parent(s) regarding the adoption assistance programs on behalf of all children available for adoption. If the Contractor fails to provide information, fails to apply for adoption assistance or finalizes an adoption prior to the execution of an adoption assistance agreement, and it is later determined that the child was eligible for adoption assistance, the Contractor shall be responsible for providing financial support to the family equal to the adoption assistance amount and eligible Medicaid coverage, from the time the family makes the request for the re-determination of eligibility and the date MDHHS determines that an error occurred based on the Contractor's failure to inform or apply for adoption assistance.

c. MARE Related Responsibilities

The Contractor shall cooperate with MARE related activities and responsibilities, as detailed in this document including but not limited to:

- 1) The Contractor shall appropriately inform and prepare children concerning the process of photo listing. Children shall be adequately attired and well groomed. Adequately attired is defined as that which a parent would provide for their child in a school photo. The Contractor is responsible for securing photography services and may request coupons or assistance from the MARE office. The Contractor is responsible for facilitating transportation to key photo sites and supervision of the child (ren) during the process.
- 2) The Contractor shall, as appropriate to the child's ability, involve youth over age nine (9) in developing individual recruitment materials and narratives for MARE photo listing.
- 3) The Contractor must submit a copy of the Order Placing Child after Consent and the Order of Adoption to the MARE office within ten (10) working days of issuance by the court.
- 4) Upon determination by the Contractor that the MARE potential family 'match' is appropriate, the child and family agencies shall begin the process towards adoption within ten (10) working days.
- 5) The Contractor shall provide a written brochure (developed by MARE) to adoptive families regarding their right to be included in the MARE prospective family registry and provide an explanation of this process during orientation. This brochure and information shall again be provided to the prospective family during the formal training process.
- 6) The Contractor shall ensure all age appropriate youth available for adoption have knowledge of and access to the MARE newsletter for youth.
- 7) The Contractor shall notify MARE no less than quarterly of planned adoption related events, scheduled or tentatively scheduled for the next quarter. These activities shall include but are not limited to orientation, training dates, workshops, adoption fairs, recruitment activities, post adoption support activities and guest speakers. The Contractor will indicate if the events are open to the public or limited to a specific audience and any costs for family participation.
- 8) If the local court is participating, the Contractor shall cooperate with MARE during planning and implementation of National Adoption Day activities and regionally based adoption events.

- 9) The Contractor shall ensure MARE staff has access to case records, the child, child's worker, and other material or persons necessary for the development and updating of the child's MARE file and recruitment material.
- 10) The Contractor shall submit the completed Disruption/Dissolution survey to MARE within thirty (30) days of receipt of the survey from MARE.
- 11) The Contractor shall provide to MARE by October 30th of each year the following:
 - a. The address of all offices.
 - b. Names, telephone numbers and email addresses of all adoption workers and supervisors.
 - c. Types of services provided by the Contractor.
- 12) The Contractor shall ensure that a supervisor attends the regionally based MARE sessions on changes to MARE processes and services. This individual shall then be responsible to disseminate MARE information and material to appropriate agency staff.

d. Caseload Tracking and Reporting

The Contractor shall report to MDHHS caseload ratios for social services supervisors, social service staff and licensing staff in a format and within timeframes as determined by MDHHS.

e. Staff Training

1) Pre-Service Institute: Requirements

The Contractor shall ensure that staff transferring to an adoption social service position from another children's services position that has successfully completed the Office of Workforce Development and Training (OWDT) Pre-Service Institute (PSI) training in that program, shall attend and complete Adoption Program Specific Transfer Training (PSTT) within six months of assuming the adoption position.

2) OWDT Registration Process

- a) The Contractor shall register all staff required to attend training by each individual staff member through the Learning Management System.
- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To

cancel or change training registration, the Contractor will need to directly contact OWDT by telephone or email.

- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by MDHHS at least seven days before the training commences.

3) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

4) Completion of Security Awareness Training (SAT)

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who is authorized to have access to client fingerprint-based criminal history record information (CHRI) under this Agreement to successfully complete security awareness training (SAT) within six months of appointment to a position with (CHRI) access and every two years thereafter. Documentation of successful SAT completion is to be located in the personnel record.

Security awareness training is located through the Learning Management System or on the following link:
http://www.michigan.gov/mdhhs/0,5885,7-339-71551_11120_74572---.00.html

2.11 Expected Performance Outcomes

During the Agreement, the Contractor shall demonstrate measurable progress toward the achievement of the outcomes listed below:

- a. Fewer than 5% of placements for adoption will end in disruption.
- b. Fewer than 5% of finalized adoptions will end in dissolution.
- c. By September 30, 2017, not less than 80% of the number of children with a goal of adoption that are legally free for adoption on September 30, 2016 shall have adoptions finalized.
- d. By September 30, 2017, not less than 80% of the number of children with a goal of adoption that are legally free for adoption on September 30, 2016 will have the adoption petition filed with the court.

2.12 Audit Requirements

Contractor/Vendor Relationship

This Agreement constitutes a contractor/vendor relationship with MDHHS..

The Contractor must immediately report to the MDHHS Bureau of Audit, Reimbursement and Quality Assurance accounting irregularities including noncompliance with provisions of this Agreement.

2.13. Financial Audit Requirements

a. Required Audit or Notification Letter

Contractors must submit to the Department either a Single Audit, Financial Statement Audit, or Audit Status Notification Letter as described below. If submitting a Single Audit or Financial Statement Audit, Contractors must also submit a Corrective Action Plan for any audit findings that impact MDHHS-funded programs, and management letter (if issued) with a response.

1) Single Audit

Contractors that are a non-profit organization and that expend \$750,000 or more in federal awards during the Contractor's fiscal year, must submit a Single Audit to the Department, regardless of the amount of funding received from the Department. The Single Audit must comply with the requirements of Title 2 Code of Federal Regulations, Subpart F.

2) Financial Statement Audit

Contractors exempt from the Single Audit requirements with fiscal years that receive \$500,000 or more in **total funding** from the Department in State and Federal grant funding must submit to the Department a Financial Statement Audit prepared in accordance with generally accepted auditing standards (GAAS).

3) Audit Status Notification Letter

Contractors exempt from the Single Audit and Financial Statement Audit requirements (1 and 2 above) must submit an Audit Status Notification Letter that certifies these exemptions. The template Audit Status Notification Letter and further instructions are available at <http://www.michigan.gov/mdhhs> by selecting Inside MDHHS menu, then MDHHS Audit, then Audit Reporting.

b. Due Date and Where to Send

The required audit and any other required submissions (i.e. Corrective Action Plan and management letter with a response), or Audit Status Notification Letter must be submitted to the Department within nine months after the end of the Contractor's fiscal year by e-mail to the Department at MDHHS-

AuditReports@michigan.gov. The required submissions must be in PDF files and compatible with Adobe Acrobat (read only). The subject line must state the agency name and fiscal year end. The Department reserves the right to request a hard copy of the audit materials if for any reason the electronic submission process is not successful.

c. Penalty

Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

d. Other Audits

The Department or federal agencies may also conduct or arrange for "agreed upon procedures" or additional audits to meet their needs.

2.14. Cost Reporting

The Contractor shall submit annual financial cost reports based on the state's fiscal year which begins October 1 and ends September 30 in the following calendar year. The reports shall contain the actual costs incurred by providers in delivering services required in this agreement to MDHHS clients for the reporting period. Costs for non-MDHHS children are not to be included. Reports will be submitted using a template provided by MDHHS. The financial reports shall be submitted annually, and will be due November 30 of each fiscal year. The Contractor must comply with all other program and fiscal reporting procedures as are or may hereinafter be established by MDHHS. Reports shall be submitted electronically to MDHHS-Foster-Care-Audits@michigan.gov with the subject line: Adoption Actual Cost Report. Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

2.15. Service Documentation

The Contractor agrees to maintain program records required by MDHHS, program statistical records required by MDHHS, and to produce program narrative and statistical data at times prescribed by, and on forms furnished by, MDHHS.

2.16. Private Agency MiSACWIS

The Contractor shall ensure that private agency staff has access to the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) through a web-based interface, henceforth referred to as the "MiSACWIS application." The contractor shall ensure that staff follow the MiSACWIS requirements for CPA contracts which are found at http://www.michigan.gov/documents/dhs/Private_Agency_MiSACWIS_for_CPA_Contracts_464663_7.pdf

For all agency assigned cases in MiSACWIS, the Contractor shall enter all case management activities, including payments and all required documentation per policy in MiSACWIS.

2.17. Billing

The Contractor shall maintain a record system that documents the total number of units of service as defined in this Agreement and delivered during the term of this Agreement. These records shall also document the specific units billed to MDHHS under this Agreement.

The Contractor shall submit a DHS-1582A to:

Michigan Department of Health and Human Services
Office of Child Welfare Policy and Programs
Suite 514 PO Box 30037
Lansing, MI 48909

The DHS-1582A shall indicate the title of the service provided and the pre adoptive and adoptive name, case number and date of birth of the child served. The DHS-1582A and any subsequent corrections must be completed and received in the Office of Child Welfare Policy and Programs within 120 days of the date of the placement or finalization, whichever is applicable, as those terms are defined in Section I(M)(2-3) of this Agreement.

- a. Billing for all designated services including: per diem, placement, finalization, permanency, and disruptions require a copy of the Order Terminating Parental Rights (Permanent Court Ward/Commitment), the signed DHS3600 for cases referred on or after May 2016, or earlier if applicable, and with the exception of per diems, the signed and dated documentation by the court (DHS 5308 or petition date stamped from the court) verifying the date that the court has accepted the adoption petition and support documentation .
- b. The MARE rates require a copy of the MARE photo listing and the subsequent MARE "Hold" document.
- c. The Residential rate requires a copy of the discharge summary from the residential facility and a copy of the placement record including placement with the prospective adoptive parent prior to filling the petition.
- d. Billing for finalizations requires a copy of the Order of Adoption.
- e. Billing for delayed referrals must include a copy of the Contractors acceptance form with the referral date and statement by MDHHS that includes the child's commitment date. The referral form must be signed

by a MDHHS representative and must have "Delayed Referral" designated on the payment voucher.

- f. Billing for placement requires a copy of the referral/acceptance form (signed DHS 3600 for cases referred on or after May 2016, or earlier if applicable), Order Terminating Parental Rights and the Order Placing Child.
- g. Disruptions require an Ex Parte Order, or order dismissing, a copy of the initial placement order, initial commitment order, documentation verifying the medical condition of the family member if appropriate, a copy of the placement check and agency disruption report.
- h. Legal Risk–Order Placing Child Filed: In cases where a birth parent, individually or through an attorney, has filed a petition to appeal the termination of parental rights, the Contractor shall submit a DHS-1582A requesting payment (placement and finalization). The Contractor must also submit a photocopy of the Claim, filed in conformity with MCR 7.203.
- i. When billing for the per diem, each payment voucher shall be child specific. Attached to the initial payment voucher the following documents must be included: the DHS-3600 (for Adoption Services) with the date of acceptance indicated, the signed agreement of intent to adopt by a relative or identified family (for matched cases only) and verification from MARE that a complete photo listing or a complete "hold" registration was submitted on the case. The Contractor shall identify in Box 13 of the payment voucher the number of days covered, date range, and the number of per diem billings submitted on behalf of the child.
- j. When requesting an exception to the payment rate, it is the responsibility of the Contractor to demonstrate that requests for adoption assistance eligibility determination or MCI consent delayed the adoption placement. If the delay was caused by submission of incomplete paperwork or a lack of response to requests for information, the consideration for exception will be denied. There is a thirty (30) day standard of promptness for adoption assistance eligibility determinations and MCI regular and expedited consent requests and a ninety (90) day standard of promptness for MCI consent requests on competing parties. If information is missing, incomplete, or unclear and needing follow-up, the standard of promptness timeframe will not begin until all needed information is available for review, including legal documents and information needed to fulfill policy requirements. The Adoption Payment Exception Request, DHS 832 form must be submitted with the completed DHS-1582A.
- k. The ICPC rate(s) require copies of the ICPC referral, DHS-3600 (for Adoption Services), adoptive family home study, adoption supervision

reports (if applicable), Order Terminating Parental Rights (Permanent Court Ward/Commitment), Adoption Petition documentation and Order of Adoption, if applicable.

- I. Billings for competing parties, in which the case would be eligible for a rate less than the Baseline rate and the Contractor is requesting the Baseline rate, requires the Contractor to submit a Competing Party Rate Exception Request (DHHS-5445) and copies of the case acceptance documentation, dates of the initial inquiry, adoption application and DHS-4809 from each competing party and copies of the assessment for each competing party.

2.18. Fees and Other Sources of Funding

The Contractor guarantees that any claims made to MDHHS under this Agreement shall not be financed by any source other than MDHHS under the terms of this Agreement. If funding is received through any other source, the Contractor agrees to deduct from the amount billed to MDHHS the greater of either the fee amounts, or the actual costs of the services provided.

The Contractor may not accept reimbursement from a client unless the Agreement specifically authorizes such reimbursement in the "Contractor Responsibility" Section. In such case, a detailed fee scale and criteria for charging the fee must be included. If the Contractor accepts reimbursement from a client in accordance with the terms of the Agreement, the Contractor shall deduct these fees from billings to MDHHS.

Other third party funding sources, e.g., insurance companies, may be billed for contracted client services. Third party reimbursement shall be considered payment in full unless the third party fund source requires a co-pay, in which case MDHHS may be billed for the amount of the co-pay. No supplemental billing is allowed.

2.19. Recoupment of Funding and Repayment of Debts

a. Recoupment of Funding

If the Contractor fails to comply with requirements as set forth in this Agreement, or fails to submit a revised [DHS-3469] payment request within allotted time frames established by MDHHS in consultation with the Contractor, MDHHS may, at its discretion, recoup or require the Contractor to reimburse payments made under this Agreement which MDHHS has determined that the Contractor has been overpaid. The Contractor is liable for any cost incurred by MDHHS in the recoupment of any funding.

Upon notification by MDHHS that repayment is required, the Contractor shall make payment directly to MDHHS within 30 days or MDHHS may withhold

current or future payments made under this or any other agreements, current or future, between MDHHS and the Contractor.

If the Contractor fails to: (1) correct noncompliance activities identified by MDHHS, (2) submit revised billings as requested as part of a corrective action plan when required; or (3) remit overpayments or make arrangements to have the overpayments deducted from future payments within 30 days, such failure shall constitute grounds to terminate immediately any or all of MDHHS' agreements with the Contractor. MDHHS shall also report noncompliance of the Contractor to Michigan's Department of Technology, Management and Budget. Such report may result in the Contractor's debarment from further contracts with the state of Michigan.

b. Repayment of Debts and Other Amounts due MDHHS

By entering into this Agreement, the Contractor agrees to honor all prior repayment agreements established by MDHHS with the Contractor or Contractor's predecessors. If the Contractor has an outstanding debt due to MDHHS but does not have a repayment agreement, the Contractor agrees to make monthly payments to MDHHS at an amount not less than 5% of any outstanding balance and to begin on the date this Agreement is executed.

If the Contractor fails to honor prior repayment agreements, or the Contractor fails to begin repayment on an obligation due MDHHS that is not subject to a repayment agreement, MDHHS will initiate the administrative process to reduce payments to the Contractor under this Agreement to recoup the debt. The payment reduction will be made at the amount originally established in the repayment agreement or at an amount not less than 5% of any outstanding balance effective on the date this Agreement is executed.

2.20. Child Protection Law Reporting Requirements

- a. The Contractor shall ensure that all employees who have reasonable cause to suspect child abuse or neglect shall report any suspected abuse or neglect of a child in care to MDHHS for investigation as required by Public Acts of 1975, Act Number 238.
- b. Failure of the Contractor or its employees to report suspected abuse or neglect of a child to MDHHS shall result in an immediate investigation to determine the appropriate corrective action up to and including termination of the contract.
- c. Failure of the Contractor or its employees to report suspected child abuse or neglect two or more times within a one-year period shall result in a review of the contract agency's violations by a designated

Administrative Review Team, which shall include the Director of CSA and the Director of DCWL or its successor agency, that shall consider mitigating and aggravating circumstances to determine the appropriate corrective action up to and included license revocation and contract termination.

2.21 The Division of Child Welfare Licensing (DCWL)

DCWL shall be responsible for review of the Contractor's compliance with the Agreement and any court orders, via an Annual Compliance Review (ACR) and Special Investigations. DCWL may review, analyze and comment on all activities covered within the terms of the Agreement or court order. If the ACR or Special Investigation reveals that the Contractor has not complied with the requirements of this Agreement or court order, the following procedures shall be implemented:

- a. DCWL shall notify the Contractor of the Agreement or court noncompliance. This notification shall occur verbally during an exit conference, and be followed with a written report of the findings. The Contractor may request a meeting to discuss and examine the identified Agreement or court noncompliance.
- b. Following the identification of the Agreement or court noncompliance, DCWL will request the Contractor submit a Corrective Action Plans (CAP) to DCWL within 15 days of receiving the written report of findings.
- c. After the Contractor's CAP has been reviewed and approved by DCWL, the Contractor's compliance with the CAP shall be reviewed in accordance with time frames established by DCWL in the written notification of acceptance of the CAP.
- d. Based on the severity or repeated nature of cited violations, a recommendation may be made by DCWL at any time to place a moratorium on new placements with the contractor or to cancel the contract. If either recommendation is made, a meeting will be convened with the director of the contracted agency, the division director of DCWL and the CSA director or designee to provide the contractor with the opportunity to provide documented information on why the moratorium or cancellation of the contract should not occur.
- e. If a moratorium on new placements is put into place, it shall be for a minimum of 90 days to allow the contractor to remedy cited violations and comply with any agreed on CAP. If the cited violations are not corrected during the period of the moratorium or additional serious violations are cited, consideration shall be given to cancellation of the agency's contract.

Final decisions regarding the cancellation of a contract shall be made by the CSA director.

2.22 Corrective Action Requirements

If a program review by MDHHS reveals a lack of compliance with the requirements of this Agreement, the Contractor shall:

- a. Meet with MDHHS to discuss the noncompliance.
- b. Prepare a corrective action plan within 30 days of receiving MDHHS' written findings.
- c. Achieve compliance within 60 days of receipt of MDHHS' approval of the corrective action plan (unless other time frames are agreed to in writing by MDHHS) or MDHHS may terminate this Agreement, subject to the standard contract terms.

2.23. Criminal Background Check

As a condition of this Agreement, the Contractor certifies that the Contractor shall, prior to any individual performing work under this Agreement, conduct or cause to be conducted for each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with:

- a. Clients under this Agreement, or who has access to client information, an Internet Criminal History Access Tool (ICHAT) check and a National and State Sex Offender Registry check.

Information about ICHAT can be found at <http://apps.michigan.gov/ichat>.

The Michigan Public Sex Offender Registry web address is <http://www.mipsor.state.mi.us>.

The National Sex Offender Public Website address is <http://www.nsopw.gov>.

- b. Children under this Agreement, a Central Registry (CR) check.

Information about CR can be found at http://www.mi.gov/MDHHS/0,1607,7-124-5452_7119_48330-180331-.00.html.

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who has access to client information, under this Agreement to timely notify

the Contractor in writing of criminal convictions (felony or misdemeanor) and/or pending felony charges or placement on the Central Registry as a perpetrator.

Additionally, the Contractor shall require each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with clients under this Agreement or who has access to client information and who has not resided or lived in Michigan for each of the previous ten (10) years to sign a waiver attesting to the fact that they have never been convicted of a felony or identified as a perpetrator, or if they have, the nature and recency of the felony.

The Contractor further certifies that the Contractor shall not submit claims for or assign to duties under this Agreement, any employee, subcontractor, subcontractor employee, or volunteer based on a determination by the Contractor that the results of a positive ICHAT and/or a CR response or reported criminal felony conviction or perpetrator identification make the individual ineligible to provide the services.

The Contractor must have a written policy describing the criteria on which its determinations shall be made and must document the basis for each determination. The Contractor may consider the recency and type of crime when making a determination. Failure to comply with this provision may be cause for immediate cancellation of this Agreement. In addition, the Contractor must further have a written policy regarding acceptable screening practices of new staff members and volunteers who have direct access to clients and/or client's personal information, which serve to protect the organization and its clients that is clearly defined. The Contractor must also assure that any subcontractors have both of these written policies.

If MDHHS determines that an individual provided services under this Agreement for any period prior to completion of the required checks as described above, MDHHS may require repayment of that individual's salary, fringe benefits, and all related costs of employment for the period that the required checks had not been completed.

3. MDHHS RESPONSIBILITIES

3.1. Payment

MDHHS shall make payments to the Contractor pursuant to MCL 17.51-17.57 and State of Michigan Financial Management Guide, Part II-Accounting and

Financial Reporting, Chapter 25, Section 100, "Prompt Payment for Goods and Services."

a. MDHHS shall make the following payments to the Contractor:

Rate Category	Placement	Finalization	Permanency
Early Adoption Level 2	\$6,900	\$3,450	\$1,150
Early Adoption Level 1	\$6,000	\$3,000	\$1,000
Baseline	\$5,400	\$2,700	\$900
Late Adoption Level 1	\$4,800	\$2,400	\$800
Late Adoption Level 2	\$4,200	\$2,100	\$700
Late Adoption Level 3	\$3,000	\$1,500	\$500
MARE	\$12,240	\$6,120	\$2,040
Residential	\$7,980	\$3,990	\$1,330
In-State Transfer Services	\$3,000		
Inter-State Existing Services	\$3,000		
Inter-State New Services	\$3,500		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoptive Home Study Denial	\$2000		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoptive Home Study Approval	\$2000		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoption Supervision with applicable reports	\$500 at Placement \$500 at Finalization		

b. Per Diem Payments

For each child where the adoption case is referred to the Contractor by MDHHS, the Contractor shall receive payment of \$20.00 per diem for each day of adoptive services from acceptance of the case (DHS 3600 for cases referred on or after October 2016, or earlier if applicable) to the date of the signed documentation from the court (DHS 5308 or petition date stamped by the court) verifying that the court has accepted the petition and support documentation, or for one hundred fifty (150) days, whichever comes first. The maximum per diem payment amount per child is \$3,000.

For adoption cases referred on or after October 2016, the Contractor may bill for the full per diem amount of \$3,000 and must include verification from MARE that either a complete photo listing or a complete hold registration was submitted to MARE on the case. In the event that the Contractor receives the full per diem amount on a case which is not assigned to the Contractor for 150 days, the Contractor will be responsible for repayment of the per diem at a rate of \$20.00 for each day in which they received a per diem payment and were no longer assigned to the case.

Payment of the initial placement rate: the total of all per diem payments for each child shall be deducted from the applicable placement rate to be paid.

c. Adoption Training Payments

The Contractor must submit the following with the completed DHS-1582A to the Office of Child Welfare Policy and Programs in central office:

- 1) A copy of the transcript reflecting the completion of the CWTI pre-service training for each adoption worker.
- 2) A statement confirming that 50% of the adoption worker's caseload will be children in the MDHHS foster care system.

d. Placement Disruption

Payment after Placement for adoptions ending in disruption will only be made in the following cases:

- 1) Disruption Due to Medical Condition of Prospective Family Member: If the adoptive family experiences a documented chronic medical condition requiring long term care or a condition anticipated to result in the death of a family member after the adoptive placement of a child, the Contractor shall be eligible for a per-diem rate. The payment shall be a portion of the appropriate rate for finalization, which shall be established by dividing the duration (number of days) of the adoptive placement until disruption by 182 days. The disruption rate shall not exceed the rate that would have otherwise been paid had finalization occurred.
- 2) Death of an Adoptive Child: In cases where a child dies between order placing in the adoptive home and the final order of adoption, the Contractor shall be eligible for a per-diem from the date of placement to the date of death (unless cause of death is determined to be neglect or abuse) not to exceed the rate that would have otherwise been paid had finalization occurred.
- 3) Disruption after Order Placing Child in the adoptive home: When the

disruption order is issued more than 182 days from the date of the order placing the child in the adoptive home, the Contractor shall be paid the full finalization rate.

- 4) Disruption of Placement Determined by MCI Superintendent: In a case where the child is placed in a home based on the decision of the MCI Superintendent, against the recommendation of the Contractor, the Contractor shall be eligible for a per-diem rate. The payment shall be a portion of the appropriate rate for finalization, which shall be established by dividing the duration (number of days) of the adoptive placement until disruption by 182 days. The disruption rate shall not exceed the rate that would have otherwise been paid had finalization occurred. Payment for subsequent placements will not reflect a disruption.

e. Adoption Dissolution

MDHHS shall recover, from the Contractor, the Permanency Unit Rate for adoptions that end in dissolution within 182 days of issuance of an Order of Adoption.

f. Payment – Re-Placement of Child after Disruption by Same Contractor

Re-placement of child photo listed on MARE or from a Residential facility:

Subsequent adoptive placement and finalization by the same Contractor (that placed the child in the disrupted/dissolved home) for a child previously reimbursed at one of the MARE rates or the Residential rate, shall not exceed the Baseline rate for a second adoptive placement/finalization. The maximum rate for any re-placement of a child photo listed on MARE or from a Residential facility beyond the second placement shall not exceed the Late Adoption Penalty Level 3 rate if paid to the same Contractor.

Re-placement by the same Contractor of a child under any rate other than a MARE or Residential rate shall not exceed the Baseline rate.

Exceptions may be made to the re-placement rate. The Contractor must submit documentation of efforts that were required to prepare a child for subsequent placement and the recruitment of an adoptive family. Submit request for exceptions to the Adoption Analyst in MDHHS Central Office and stipulate the rate requested.

g. Unit Definitions

1) Unit Title: Per Diem Payments

For each child where the adoption case is referred to the Contractor by MDHHS, the Contractor shall receive payment of \$20.00 per diem for

each day of adoptive services from acceptance of the case (signed DHS 3600 for cases referred on or after October 2016, or earlier if applicable) to date of the signed documentation from the court (DHS 5308 or petition date stamped from the court) verifying that the court has accepted the adoption petition and support documentation, or for one hundred fifty (150) days, whichever comes first. The maximum per diem payment amount per child is \$3,000.

The total amount paid for the per diem rate will be deducted from the applicable placement rate when the child is placed for adoption.

The Contractor must submit the Individual Service Agreement (DHS-3600) (for Adoption Services) with the date of acceptance indicated and the completed Adoption Payment Voucher (DHS-1582A).

For adoption cases referred on or after October 2016, the Contractor may bill for the full per diem amount of \$3,000 and must include verification from MARE that either a complete photo listing or a complete hold registration was submitted to MARE on the case. In the event that the Contractor receives the full per diem amount on a case which is not assigned to the Contractor for 150 days, the Contractor will be responsible for repayment of the per diem at a rate of \$20.00 for each day in which they received a per diem payment and were no longer assigned to the case.

2) Unit Title: Placement

All unit definitions below are based on the length of time from the receipt of the written order from the court terminating all parental rights or, the date on which the DHS-3600 is fully executed, whichever is later, to the date of the signed documentation from the court (DHS 5308 or petition or petition date stamped from the court) verifying that the court has accepted the adoption petition and support documentation.

If the child's goal changes from adoption to another goal and then changes back to the goal of adoption, the Contractor must obtain a new DHS-3600 for adoption services for the updated goal of adoption.

The Contractor must submit the Order Terminating Parental Rights, signed and dated documentation from the court (DHS 5308 or petition date stamped from the court) verifying the date that the court has accepted the adoption petition and support documentation, the Adoption Petition documentation and the Acceptance of Case Transfer documents (DHS3600) if applicable. The document indicating the date of acceptance must be signed by a MDHHS representative as verification. If there was a per diem payment for the case prior to

placement the Contractor must note "per diem billed" in box 13 of the DHS-1582A.

3) Unit Title: Finalization

Unit Definition: One unit equals receipt of an Order of Adoption for a child for whom a Placement rate was paid.

4) Unit Title: Permanency

Unit Definition: One unit equals an adoption that does not end in dissolution within 182 days of the issuance of an Order of Adoption. The Permanency Unit Rate shall be paid at the same time as the Finalization Unit Rate. The Contractor will be responsible for repayment of the Permanency Unit Rate for those cases for which the adoption ended in dissolution.

5) Unit Title: Baseline

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child is signed and dated by the court more than two hundred ten (210) days, but two hundred forty (240) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

6) Unit Title: Early Adoption - Level 1

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child is signed by the court more than one hundred fifty (150) but two hundred ten (210) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

7) Unit Title: Early Adoption - Level 2

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child is signed and dated by the court one hundred fifty (150) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

8) Unit Title: Late Adoption - Level 1

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child is signed and dated by the court more than two hundred forty (240) days, but three hundred (300) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

9) Unit Title: Late Adoption - Level 2

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child is signed and dated by the court more than three hundred (300) days, but three hundred sixty (365) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

10) Unit Title: Late Adoption - Level 3

Unit Definition: The Adoption Petition documentation or Order Placing Child is signed and dated by the court more than three hundred sixty (365) days after the date of placement as defined in Subsection 3.1. g. ii above.

11) Unit Title: MARE

Unit Definition: The Order Placing Child is signed and dated by the court for a child who has been registered for photo listing on MARE.

The Contractor is not eligible for the MARE rate if the Contractor photo lists the child. The exception to allow for payment of the MARE rate to the supervising agency requires the Contractor to submit a written request verifying that the child was photo listed for six (6) months and documentation must be provided to demonstrate the family is a newly approved recruited family and the following conditions are true:

- a. The identified family is not a relative or foster parent to the adoptive child.
- b. The identified family has either not previously provided care for the child or has previously provided care and during the time that the child was photo listed had indicated in writing that they were not interested in adopting the child. The written document from the family must be submitted with the MARE payment request.

The Contractor is eligible for the MARE rate if the child's foster care case remains with MDHHS and, at the time of referral, there was no identified adoptive resource. The Contractor must register the child for photo listing within 30 days of acceptance of the case if no adoptive resource has been identified. If the Contractor applies for the MARE rate there must be a written explanation of why the adoptive family was not identified as a potential adoptive resource within the first 30 days after acceptance of the case.

12) Unit Title: Residential

Unit Definition: The Order Placing Child is signed and dated by the court for a child who has been placed in residential care (defined as staffed institutional care, not including foster group homes) and the child is under the Contractor's supervision for Adoption Services.

13) Unit Title: MARE and Residential Rate with Pre-placement

Unit Definition: When a child photo-listed with MARE or in a Residential facility is placed into a prospective adoptive home through a foster care placement to allow for a period of adjustment and supervision (prior to petition to place for adoption), the reimbursement for the appropriate rate shall be calculated based on the date the pre-placement began.

The MARE, and Residential Rate will be applied when the court signs the Order Placing Child within two hundred seventy (270) days of placing the child in the home for foster care services.

14) Unit Title: In-State Transfer Services

Unit Definition: The Contractor completes satisfactory services requested for pre-placement activities for a child under the supervision of the Contractor and referred for adoptive placement to another contractor or MDHHS local office. The MDHHS monitor for the foster care case shall define satisfactory services.

15) Unit Title: Interstate Existing Services

Unit Definition: A child under the adoption services supervision of the Contractor is referred for adoptive placement through a private or public agency in the state where the adoptive family resides and the child has previously been placed with the family through Interstate foster/relative care prior to termination of parental rights and assignment of an adoption worker.

16) Unit Title: Interstate New Services

Unit Definition: A child under the adoption services supervision of the Contractor is referred for adoptive placement through a private or public agency in the state where the adoptive family resides and the child has not been placed with the family through Interstate foster/relative care prior to termination of parental rights and assignment of an adoption worker.

17) Unit Title: ICPC Referred from Other U.S. States

A child under the child welfare system of another ICPC participating state is referred to Michigan for adoption services through ICPC. DHS-3600 (for Adoption Services) is required from the local Michigan county.

18) Unit Title: Competing Parties

More than one party is interested in adopting a particular child or sibling group and is assessed by the contractor in one of the following formats: Preliminary Adoptive Family Assessment, BCAL 3130 Initial Foster Home/Adoption Evaluation, or DHS 612, Adoptive Family Assessment Addendum. The rate paid on a competing parties' case shall not fall below the "Baseline" rate category, unless an agency has failed to act according to the timeframes outlined in policy.

h. Adoption Training Payments

A payment will be made to the Contractor for each staff that completes adoption training and passes competency tests as required:

1) Completion of the Caseworker Training

Payment will be \$6,000 for completion of a MDHHS Pre-Service Institute training that includes a total of nine weeks of competency-based classroom and field training within 16 weeks of hire.

2) Completion of the Child Welfare Certificate (CWC) Training

Payment will be a maximum of \$3,000, calculated on an actual cost reimbursement basis, for completion of the Office of Workforce Development and Training (OWDT)-CWC training. This training includes a minimum of five weeks of competency-based classroom, and field training if the caseworker certificate holder passes the competency evaluation.

3) Completion of the Child Welfare Supervisor Training.

Payment will be a maximum of \$1500, calculated on an actual cost reimbursement basis for completion of the Supervisor Training. This includes a minimum of one week of training within 90 days of hire/promotion if the supervisor passes the competency-based evaluation including the written exam through OWDT.

All supervisors hired on or after January 1, 2017 must complete the Supervisor Training and pass the competency evaluation.

4) Completion of the adoption Program Specific Transfer Training (PSTT) within 6 months of hire.

Payment will be a maximum of \$2,800, calculated on an actual cost reimbursement basis for completion of the adoption PSTT training. This training is the same as the Adoption Core Training for adoption caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated. If a supervisor has not completed this training since April 1, 2006, they need to complete this PSTT Training within 6 months of hire.

3.2. Performance Evaluation and Monitoring

The services provided by the Contractor under this Agreement shall be evaluated and assessed at least annually by MDHHS on the basis of the criteria outlined in Section 2.11.

MDHHS shall perform contract monitoring through activities such as:

- a. Auditing expenditure reports.

- b. Conducting on-site monitoring.
- c. Reviewing and analyzing reports.

4. STANDARD TERMS

4.1 Duties of Contractor

Contractor must perform the services and provide the deliverables described in Section 2.10 – Services to be Provided (the “Agreement Activities”). An obligation to provide delivery of any commodity is considered a service and is an Agreement Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Agreement Activities, and meet operational standards, unless otherwise specified in Section 2.10 – Services to be Provided.

Contractor must:

- a. Perform the Agreement 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 this Agreement;
- c. Provide all Agreement Activities in good quality, with no material defects;
- d. Not interfere with MDHHS’s operations;
- e. Obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of this Agreement;
- f. Cooperate with MDHHS, including MDHHS’s quality assurance personnel, and any third party to achieve the objectives of this Agreement;
- g. Return to MDHHS any State-furnished equipment or other resources in the same condition as when provided when no longer required for this Agreement;
- h. Not make any media releases without prior written authorization from MDHHS;
- i. Assign to MDHHS 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 this Agreement;
- j. Comply with all State physical and IT security policies and standards which will be made available upon request; and
- k. Provide MDHHS priority in performance of this Agreement except as mandated by federal disaster response requirements.

Any breach under this provision 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.

4.2 Notices

All notices and other communications required or permitted under this Agreement 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.

4.3 Reserved

4.4 Reserved

4.5 Performance Guarantee

Contractor must at all times have financial resources sufficient, in the opinion of MDHHS, to ensure performance of this Agreement and must provide proof upon request. MDHHS may require a performance bond if, in the opinion of MDHHS, it will ensure performance of this Agreement.

4.6 Insurance Requirements

Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must:

- a. Protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance;
- b. Be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and
- c. Be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or

<u>Deductible Maximum:</u> \$50,000 Each Occurrence	both CG 2010 07 04 and CG 2037 07 04. If the contractor will deal with children, schools, or the cognitively impaired, coverage must not have exclusions or limitations related to sexual abuse and molestation liability.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Liability Insurance	

<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

If any of the required policies provide claims-made coverage, the Contractor must:

- a. Provide coverage with a retroactive date before the effective date of the Agreement or the beginning of Agreement Activities;
- b. Maintain coverage and provide evidence of coverage for at least three years after completion of the Agreement Activities; and
- c. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, Contractor must purchase extended reporting coverage for a minimum of three years after completion of work.

Contractor must:

- a. Provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Agreement formation and within 20 calendar days of the expiration date of the applicable policies;
- b. Require that subcontractors maintain the required insurances contained in this Section;
- c. Notify the Contract Administrator within five business days if any insurance is cancelled; and
- d. Waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

Contractors who are self-insured must provide the following:

- a. Proof of self-insurance from the Michigan Department of Insurance and Financial Services for auto liability.
- b. Proof of self-insurance from the Michigan Department of Licensing and Regulatory Affairs for worker's compensation and employer's liability.
- c. A copy of their most recent, independently audited financial statements.

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

4.7 Reserved

4.8 Extended Purchasing Program

Upon written agreement between MDHHS and the Contractor, this Agreement may be extended to: (a) MiDEAL members, (b) other states (including governmental subdivisions and authorized entities), or (c) State of Michigan employees. 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.

If extended, Contractor must supply all Agreement Activities at the established Agreement prices and terms, and MDHHS 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.

4.9 Independent Contractor

Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Agreement. Contractor, its employees, and agents will not be considered employees of MDHHS. No partnership or joint venture relationship is created by virtue of this Agreement. Contractor, and not MDHHS, 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.

4.10 Subcontracting

Contractor may not delegate any of its obligations under this Agreement without the prior written approval of MDHHS. Contractor must notify MDHHS prior to the proposed delegation, and provide MDHHS 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 Agreement Activities;
- b. Make all payments to the subcontractor; and

c. Incorporate the terms and conditions contained in this Agreement in any subcontract with a subcontractor.

Contractor remains responsible for the completion of the Agreement Activities, compliance with the terms of this Agreement, and the acts and omissions of the subcontractor. MDHHS, in its sole discretion, may require the replacement of any subcontractor.

4.11 Staffing

MDHHS's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

4.12 Reserved

4.13 Assignment

Contractor may not assign this Agreement to any other party without the prior approval of MDHHS. Upon notice to Contractor, MDHHS, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Agreement to any other party. If MDHHS determines that a novation of this Agreement to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

4.14 Change of Control

Contractor will notify, at least 90 calendar days before the effective date, MDHHS of a change in Contractor's organizational structure or ownership. For purposes of this Agreement, 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; or
- f. 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 Agreement and all of its obligations under this Agreement.

4.15 Reserved

4.16 Acceptance

Agreement Activities are subject to inspection and testing by MDHHS within 30 calendar days of MDHHS's receipt of them ("State Review Period"), unless otherwise provided in Section 2.10 – Services to be Provided. If the Agreement Activities are not fully accepted by MDHHS, MDHHS will notify Contractor by the end of the State Review Period that either: (a) the Agreement Activities are accepted, but noted deficiencies must be corrected; or (b) the Agreement Activities are rejected. If MDHHS finds material deficiencies, it may: (i) reject the Agreement Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Agreement in accordance with Section 4.23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Agreement Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Agreement Activities to MDHHS. If acceptance with deficiencies or rejection of the Agreement Activities impacts the content or delivery of other non-completed Agreement Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to this Agreement. 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 Agreement.

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

4.17 Reserved

4.18 Reserved

4.19 Reserved

4.20 Terms of Payment

Invoices must conform to the requirements communicated from time-to-time by MDHHS. All undisputed amounts are payable within 45 days of MDHHS's receipt. Contractor may only charge for Agreement Activities performed as

specified in Section 2.10 – Services to be Provided. Invoices must include an itemized statement of all charges. MDHHS 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 MDHHS's exclusive use. Notwithstanding the foregoing, all prices are inclusive 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 MDHHS under this Agreement.

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

MDHHS will only disburse payments under this Agreement through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, MDHHS is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, MDHHS reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by MDHHS to Contractor under this Agreement.

4.21 Reserved

4.22 Stop Work Order

MDHHS may suspend any or all activities under this Agreement at any time. MDHHS 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, MDHHS will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate this Agreement or purchase order. MDHHS will not pay for Agreement Activities, Contractor's lost profits, or any additional compensation during a stop work period.

4.23 Termination for Cause

MDHHS may terminate this Agreement for cause, in whole or in part, if Contractor, as determined by MDHHS:

- 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 MDHHS 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 Agreement will not be construed to mean that other breaches are not material.

If MDHHS terminates this Agreement under this Section, MDHHS 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 this Agreement, 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 4.24, Termination for Convenience.

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

4.24 Termination for Convenience

MDHHS may immediately terminate this Agreement 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 Agreement Activities immediately, or (b) continue to perform the Agreement Activities in accordance with Section 4.25, Transition Responsibilities. If MDHHS terminates this Agreement for convenience, MDHHS will pay all reasonable costs, as determined by MDHHS, for MDHHS approved Transition Responsibilities.

The Contractor may terminate this Agreement upon 30 days written notice to MDHHS at any time prior to the completion of the Agreement period.

4.25 Transition Responsibilities

Upon termination or expiration of this Agreement for any reason, Contractor must, for a period of time specified by MDHHS (not to exceed 90 calendar days), provide all reasonable transition assistance requested by MDHHS, to allow for the expired or terminated portion of the Agreement Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Agreement Activities to MDHHS or its designees. Such transition assistance may include, but is not limited to:

- a. Continuing to perform the Agreement Activities at the established Agreement rates;
- b. Taking all reasonable and necessary measures to transition performance of the work, including all applicable Agreement Activities, training, equipment, software, leases, reports and other documentation, to MDHHS or MDHHS's designee;
- c. Taking all necessary and appropriate steps, or such other action as MDHHS may direct, to preserve, maintain, protect, or return to MDHHS all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of MDHHS;
- d. Transferring title in and delivering to MDHHS, at MDHHS's discretion, all completed or partially completed deliverables prepared under this Agreement as of the Agreement termination date; and
- e. Preparing an accurate accounting from which MDHHS and Contractor may reconcile all outstanding accounts (collectively, "Transition Responsibilities").

This Agreement will automatically be extended through the end of the transition period.

4.26 General Indemnification

Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to:

- a. Any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Agreement;
- 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).

MDHHS 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 MDHHS, demonstrate its financial ability to carry out these obligations.

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

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

4.27 Infringement Remedies

If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense:

- a. Procure for MDHHS 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 MDHHS with appropriate credits to MDHHS against Contractor's charges and reimburse MDHHS for any losses or costs incurred as a consequence of MDHHS ceasing its use and returning it.

4.28 Limitation of Liability

MDHHS is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

4.29 Disclosure of Litigation, or Other Proceeding

Contractor must notify MDHHS 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 this Agreement, including:

- a.A criminal Proceeding;
- b.A parole or probation Proceeding;
- c.A Proceeding under the Sarbanes-Oxley Act;
- d.A civil Proceeding involving:
 - 1)A claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or
 - 2)A governmental or public entity's claim or written allegation of fraud; or
- e.A Proceeding involving any license that Contractor is required to possess in order to perform under this Agreement.

4.30 Reserved

4.31 State Data

a.Ownership. MDHHS's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes:

- 1)MDHHS's data collected, used, processed, stored, or generated as the result of the Agreement Activities;
- 2)Personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the Agreement 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,
- 3)Personal health information ("PHI") collected, used, processed, stored, or generated as the result of the Agreement 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 MDHHS and all right, title, and interest in the same is reserved by MDHHS.

This Section survives the termination of this Agreement.

b.Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Agreement Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Agreement Activities. Contractor must:

- 1)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 Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss;
- 2)Use and disclose State Data solely and exclusively for the purpose of providing the Agreement Activities, such use and disclosure being in accordance with this Agreement, any applicable Statement of Work, and applicable law; and
- 3)Not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than MDHHS without MDHHS's prior written consent.

This Section survives the termination of this Agreement.

c.Extraction of State Data. Contractor must, within five business days of MDHHS's request, provide MDHHS, 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 MDHHS.

d.Backup and Recovery of State Data. Unless otherwise specified in Section 2.5 – Services to be Delivered, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Section 2.10 – Services to be Provided, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two hours at any point in time.

e.Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable:

- 1)Notify MDHHS as soon as practicable but no later than 24 hours of becoming aware of such occurrence;
- 2)Cooperate with MDHHS 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 MDHHS;

- 3) In the case of PII or PHI, at MDHHS's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five calendar days of the occurrence; or (ii) reimburse MDHHS for any costs in notifying the affected individuals;
- 4) 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;
- 5) Perform or take any other actions required to comply with applicable law as a result of the occurrence;
- 6) Without limiting Contractor's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless MDHHS for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from MDHHS in connection with the occurrence;
- 7) Be responsible for recreating lost State Data in the manner and on the schedule set by MDHHS without charge to MDHHS; and,
- 8) Provide to MDHHS a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.

This Section survives the termination of this Agreement.

4.32 Non-Disclosure of Confidential Information

The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Agreement.

a. Meaning of Confidential Information. For the purposes of this Agreement, the term "Confidential Information" means all information and documentation of a party that:

- 1) Has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party;
- 2) If disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and,
- 3) Should reasonably be recognized as confidential information of the disclosing party.

The term "Confidential Information" does not include any information or documentation that was:

- 1) Subject to disclosure under the Michigan Freedom of Information Act (FOIA);
- 2) Already in the possession of the receiving party without an obligation of confidentiality;
- 3) Developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights;
- 4) Obtained from a source other than the disclosing party without an obligation of confidentiality; or,
- 5) 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 Agreement, 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 Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. 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:

- 1) Use of a subcontractor is authorized under this Agreement;
- 2) The disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and
- 3) Contractor obligates the subcontractor in a written contract to maintain MDHHS's Confidential Information in confidence.

At MDHHS'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 Agreement 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 MDHHS, at the sole election of MDHHS, the immediate termination, without liability to MDHHS, of this Agreement or any Statement of Work corresponding to the breach or threatened breach.

e. Surrender of Confidential Information upon Termination. Upon termination of this Agreement or a Statement of Work, in whole or in part, each party must, within five 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 MDHHS following the timeframe and procedure described further in this Agreement. Should Contractor or MDHHS 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 five calendar days from the date of termination to the other party. However, MDHHS'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.

4.33 Data Privacy and Information Security

a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for

establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to:

- 1)Ensure the security and confidentiality of the State Data;
- 2)Protect against any anticipated threats or hazards to the security or integrity of the State Data;
- 3)Protect against unauthorized disclosure, access to, or use of the State Data;
- 4)Ensure the proper disposal of State Data; and
- 5)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 MDHHS, 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 MDHHS.

c.Right of Audit by the State. Without limiting any other audit rights of MDHHS, MDHHS has the right to review Contractor's data privacy and information security program prior to the commencement of Agreement Activities and from time to time during the term of this Agreement. During the providing of the Agreement Activities, on an ongoing basis from time to time and without notice, MDHHS, 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 MDHHS, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by MDHHS regarding Contractor's data privacy and information security program.

d.Audit Findings. Contractor must implement any required safeguards as identified by MDHHS or by any audit of Contractor's data privacy and information security program.

e.State's Right to Termination for Deficiencies. MDHHS reserves the right, at its sole election, to immediately terminate this Agreement or a Statement of Work without limitation and without liability if MDHHS determines that Contractor fails or has failed to meet its obligations under this Section.

4.34 Reserved

4.35 Reserved

4.36 Records Maintenance, Inspection, Examination, and Audit

MDHHS or its designee may audit Contractor to verify compliance with this Agreement. Contractor must retain, and provide to MDHHS or its designee and the auditor general upon request, all financial and accounting records related to this Agreement through the term of this Agreement and for four years after the latter of termination, expiration, or final payment under this Agreement 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, MDHHS and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Agreement Activities are being performed, and examine, copy, and audit all records related to this Agreement. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of this Agreement 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 Agreement Activities in connection with this Agreement.

4.37 Warranties and Representations

Contractor represents and warrants:

- a. Contractor is the owner or licensee of any Agreement Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use;
- b. All Agreement Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect;
- c. The Agreement 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 MDHHS or its designee any manufacturer's warranty for the Agreement Activities;
- e. The Agreement Activities are merchantable and fit for the specific purposes identified in this Agreement;
- f. The Agreement signatory has the authority to enter into this Agreement;
- g. All information furnished by Contractor in connection with this Agreement fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform MDHHS of any material adverse changes; and

h.All information furnished and representations made in connection with the award of this Agreement is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading.

A breach of this Section is considered a material breach of this Agreement, which entitles MDHHS to terminate this Agreement under Section 4.23, Termination for Cause.

4.38 Conflicts and Ethics

Contractor will uphold high ethical standards and is prohibited from:

- a.Holding or acquiring an interest that would conflict with this Agreement;
- b.Doing anything that creates an appearance of impropriety with respect to the award or performance of this Agreement;
- 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 this Agreement.

Contractor must immediately notify MDHHS 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 Agreement Activities in connection with this Agreement.

4.39 Compliance with Laws

Contractor must comply with all federal, state and local laws, rules and regulations.

4.40 Reserved

4.41 Reserved

4.42 Nondiscrimination

Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Agreement.

4.43 Unfair Labor Practice

Under MCL 423.324, MDHHS may void any Agreement with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

4.44 Governing Law

This Agreement 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 Agreement are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Agreement must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint agents in Michigan to receive service of process.

4.45 Non-Exclusivity

Nothing contained in this Agreement is intended nor will be construed as creating any requirements contract with Contractor. This Agreement does not restrict the State or its agencies from acquiring similar, equal, or like Agreement Activities from other sources.

4.46 Force Majeure

Neither party will be in breach of this Agreement 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, MDHHS may immediately contract with a third party.

4.47 Dispute Resolution

The parties will endeavor to resolve any Agreement dispute in accordance with this provision. 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 MDHHS's right to terminate this Agreement.

4.48 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the Agreement or project to which it relates must not be made without prior written MDHHS approval, and then only in accordance with the explicit written instructions of MDHHS.

4.49 Website Incorporation

MDHHS is not bound by any content on Contractor's website unless expressly incorporated directly into this Agreement.

4.50 Entire Agreement

This Agreement is the entire agreement of the parties related to the Agreement Activities. This Agreement supersedes and replaces all previous understandings and agreements between the parties for the Agreement Activities.

4.51 Severability

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

4.52 Waiver

Failure to enforce any provision of this Agreement will not constitute a waiver.

4.53 Survival

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

4.54 Agreement Modification

This Agreement may not be amended except by signed agreement between the parties. Notwithstanding the foregoing, no subsequent Statement of Work or amendment executed after the effective date will be construed to amend this Agreement unless it specifically states its intent to do so and cites the section or sections amended.

The Contractor shall, upon request of MDHHS and receipt of a proposed amendment, amend this Agreement, if and when required in the opinion of MDHHS, due to the revision of federal or state laws or regulations.

4.55 Options to Renew

At the discretion of MDHHS, this Agreement may be renewed in writing by an amendment not less than 30 days before its expiration. This Agreement may be renewed for up to two additional one-year periods.

4.56 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Assurance is hereby given to MDHHS that the Contractor will comply with Federal Regulation, 2 CFR part 180 and certifies to the best of its knowledge and belief that it, its employees and its subcontractors:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. Have not within a three-year period preceding this Agreement been convicted of or had civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in section 2, and;
- d. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Where the parties are unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this Agreement.

The Contractor certifies to the best of its knowledge that within the past three years, the Contractor has not;

- a. Failed to substantially perform a state contract, agreement, or subcontract according to its terms, conditions, and specifications within specified time limits.
- b. Refused to provide information or documents required by a contract or agreement including, but not limited to information or documents necessary for monitoring contract performance.
- c. Failed to respond to requests for information regarding contract or agreement compliance, or accumulated repeated substantiated complaints regarding performance of a contract or agreement.
- d. Failed to perform a state contract, agreement, or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.

The Contractor shall include Section 4.56 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters) language as written above in all subcontracts with other parties.

The Contractor shall require each primary subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether at the time of the award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the state of Michigan. The Contractor shall then inform MDHHS of the subcontractor's status and reasons for the Contractor's decision to use such subcontractor, if the Contractor so decides.

If it is determined that the Contractor knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, MDHHS may immediately terminate this Agreement.

If the state finds that grounds to debar exist, it shall send notice to the Contractor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the Contractor does not respond with a written request for a hearing within 20 calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight years. After the debarment period expires, the Contractor may reapply for inclusion on bidder lists through the regular application process by authority of Executive Order 2003-1.

EXHIBIT 2

Received

State of Michigan
 Department of Human Services
 Office of Contracts and Purchasing (OCP)
 PO Box 30037, Lansing, MI 48909

AUG 18 2014

Or
 235 S. Grand Avenue, Suite 1201, Lansing, MI 48933 **Contracts & Purchasing**

AGREEMENT NO: PAFC15-33001
 Between
THE STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
 And

CONTRACTOR	PRIMARY CONTACT	EMAIL
St. Vincent Catholic Charities	Andrea Seyka	SeykaA@stvcc.org
CONTRACTOR ADDRESS	TELEPHONE	
2800 West Willow; Lansing, MI 48917-1833	517-323-4734	
STATE CONTACT	NAME	TELEPHONE
Contract Administrator	Amanda Doane	- -
OCP Analyst	Melanie Sanford	- -
		EMAIL
		DoaneA@michigan.gov
		SanfordM2@michigan.gov

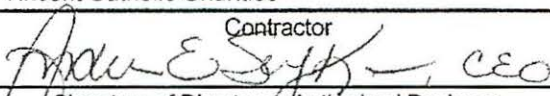
AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Placing Agency Foster Care		
GEOGRAPHIC AREA	Statewide		
INITIAL TERM	EFFECTIVE DATE*	EXPIRATION DATE	AVAILABLE OPTION YEARS
2 Years	October 1, 2014	September 30, 2016	2
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION	\$1,790,000.00		
CONTRACT TYPE	Per Diem		

*The effective date of the contract shall be the date listed in the "Effective Date" box above, or the date of Department of Human Services (DHS) signature below, whichever is later.

The undersigned have the lawful authority to bind the Contractor and DHS to the terms set forth in this Agreement. Section 291 of the fiscal year 2013 Omnibus Budget, PA 200 of 2012, requires verification that all new employees of the Contractor and all new employees of any approved subcontractor, working under this Agreement, are legally present to work in the United States. The Contractor shall perform this verification using the E-verify system (<http://www.uscis.gov/portal/site/uscis>). The Contractor's signature on this Agreement is the Contractor's certification that verification has and will be performed. The Contractor's signature also certifies that the Contractor is not an Iran linked business as defined in MCL 129.312.

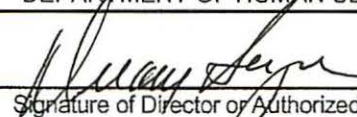
FOR THE CONTRACTOR:

St. Vincent Catholic Charities

Contractor

 Signature of Director or Authorized Designee
 ANDREA E. SEYKA
 Print Name
 8/19/14
 Date

FOR THE STATE:

DEPARTMENT OF HUMAN SERVICES


 Signature of Director or Authorized Designee
 Duane Berger
 Print Name
 9/18/2014
 Date

Contract No: PAFC15-33001

1st Year Amount: \$895,000.00

2nd Year Amount: \$895,000.00

Total Contract Amount: \$1,790,000.00

This Agreement will be in effect from the date of DHS signature through September 30, 2016. No service will be provided and no costs to the state will be incurred before October 1, 2014 or the effective date of the Agreement, whichever is later. Throughout this Agreement, the date of DHS signature or October 1, 2014, whichever is later, shall be referred to as the begin date.

I. CONTRACTOR RESPONSIBILITIES

A. Location of Facilities

The Contractor shall provide services in client, relative caregiver, and foster parent homes.

The Contractor shall provide services described herein at the following location:

2800 West Willow; Lansing

B. Client Profile

1. Eligible Client Population:

Children for whom the family court has issued an order which makes the Department of Human Services (DHS) responsible for the child's placement, care and supervision.

OR

Children for whom the family court has authorized a placement in the parental home in a Trial Reunification living arrangement.

The period of time eligible for a Trial Reunification shall not exceed 180 days from the date of the child(ren)'s placement in a parental home. Child(ren) must enter Trial Reunification directly from foster care and the family court must retain jurisdiction with care and custody continuing with DHS.

The Contractor shall provide foster care services to all children placed under this Agreement.

C. License and Provider Number

The DHS Bureau of Children and Adult Licensing (BCAL) is the licensing agency for Child Placement Agencies (CPA). A license is issued to a certain person or

Contract Number: PAFC15-33001

organization at a specific location, is non-transferable, and remains the property of DHS. Therefore, an institution must be established at a specific location.

The Contractor shall ensure that, for the duration of this Agreement, it shall maintain a license for those program areas and services that are provided for in this Agreement. If the Contractor fails to comply with this section, DHS may terminate this Agreement for default.

The Contractor is licensed to provide service under this Agreement under the following license number: CB330201019

Bridges Provider Number: 6356725

MISACWIS Provider Number: 10400303

D. Geographic Area to be Served

1. The Contractor shall provide all services described herein in the following geographic area: Statewide

E. Compliance Requirements

The Contractor shall comply with all applicable DHS policy Children's Foster Care Manual (FOM) and DHS policy amendments (including interim policy bulletins) and all applicable provisions in the Modified Settlement Agreement and Consent Order entered in Dwayne B. v. Snyder, et al., 2:06-cv-13548.

DHS policies, amendments and policy bulletins, are published on the following internet link: <http://www.michigan.gov/dhs>

Throughout the term of this Agreement, the Contractor shall ensure that it provides all applicable DHS policy and DHS policy amendments (including interim policy bulletins) to social service staff. The Contractor shall ensure that social service staff complies with all applicable requirements.

The Contractor shall participate in random moment time studies (RMTS). An RMTS is a process where participants are emailed short surveys and asked to indicate what they were doing at an assigned time. The time study is required to determine the amount of time spent on various activities. Based on these results, DHS determines the amount that can be charged to various funding sources.

The Contractor shall assure the provision of all treatment services required based on an assessment of each child and parents' needs. Treatment services include, but are not limited to the provision of counseling/therapy for each child. The Contractor shall ensure the provision of all medical, dental and behavioral health services required based on an assessment of each child's needs. The Contractor may utilize Medicaid (or private insurance) reimbursable services to comply with this requirement. If a counseling or

Contract Number: PAFC15-33001

therapy service is not available or accessible for each child, the Contractor is responsible for the direct provision of the service.

If DHS makes a referral to a child placing agency for foster care case management services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral immediately, within one hour, of receipt of the referral. If a need for placement is imminent, DHS may make referrals for placement concurrently to other contracted providers.

Compliance with DHS Modified Settlement Agreement and Consent Order

The Contractor shall ensure compliance with the applicable requirements of the following sections in Dwayne B. v. Rick Snyder Modified Settlement Agreement and Consent Order hereinafter referred to as the Modified Settlement Agreement:

1. Section VI. Staff Qualifications, Training, Caseloads and Supervision
2. Section VII. Assessments, Case Planning and Provision of Services
3. Section VIII. Services and Placement Resources Development and Utilization
4. Section X. Placement Standards and Limitations
5. Section XI. Limitations on Use of Psychotropic Medications, Corporal Punishment, and Seclusion/Isolation
6. Section XII. DHS Supervision of Contract Agencies

Additional Requirements:

1. Foster Home Licensing Data Entry

The Contractor shall document all recruitment and licensing activities into the tracking system identified by DHS.

2. Child Protection Law Reporting Requirements

- a. The Contractor shall ensure that all employees who have reasonable cause to suspect child abuse or neglect shall report any suspected abuse or neglect of a child in care to DHS for investigation as required by Public Acts of 1975, Act Number 238.
- b. Failure of the Contractor or its employees to report suspected abuse or neglect of a child to DHS shall result in an immediate investigation to determine the appropriate corrective action up to and including termination of the contract.
- c. Failure of the Contractor or its employees to report suspected child abuse or neglect two or more times within a one-year period shall result in termination of the contract.

3. Cost Reporting

The Contractor shall submit annual financial cost reports based on the state's fiscal year which begins October 1 and ends September 30 in the following calendar year. The reports shall contain the actual costs

Contract Number: PAFC15-33001

incurred by providers in delivering services required in this agreement to DHS clients for the reporting period. Costs for non-DHS children are not to be included. Reports will be submitted using a template provided by DHS. The financial reports shall be submitted annually, and will be due November 30th of each fiscal year. The Contractor must comply with all other program and fiscal reporting procedures as are or may hereinafter be established by DHS. Reports shall be submitted electronically to DHS-OCP@michigan.gov with the subject line: PAFC Actual Cost Report.

4. Caseload Tracking and Reporting

The Contractor shall report to DHS caseload ratios for social services supervisors, social service staff and licensing staff in a format and within timeframes as determined by DHS.

5. Service Standards for Trial Reunification

Trial Reunification is a court-ordered placement where the child is returned from an out-of-home placement to the care of the parent or guardian from whom he or she was removed. The child remains under court supervision during the Trial Reunification period with the DHS retaining placement care and custody.

a. The Contractor shall provide the following services to children in trial reunification:

- 1) Assist in preparing the parent, child, and caregiver for the transition to trial reunification. See FOM 722-7.
- 2) A Family Team Meeting prior to placement of a child in the parental home to develop a transition plan with the parent, caregiver and child, if age appropriate. The Contractor shall have Family Team Meetings quarterly until case closure. See FOM 722-06B.
- 3) Complete a new Family Assessment of Needs and Strengths, Child Assessment of Needs and Strengths, and Safety Assessment and Safety Plan. See FOM 722-8A, 722-8B and 722-9B.
- 4) Continue case worker visit expectations as required in FOM 722-6.
- 5) Maintain support services until case closure. The Contractor shall document services needed to continue to meet the child's needs and identified providers for such services to provide continuity of services. See FOM 722-7.
- 6) Continue assessing and monitoring of the case plan and safety plan.

6. Staff Training

a. Child Welfare Training Institute: Requirements

The Contractor shall ensure that staff transferring to a foster care social service position from another children's services position that

Contract Number: PAFC15-33001

has successfully completed the Child Welfare Training Institute (CWTI) Pre-Service Institute (PSI) training in that program, shall attend and complete CWTI-Foster Care Private Agency Program Specific Transfer Training (PSTT) within six months of assuming the foster care position.

1) Child Welfare Training Institute: Registration Process

- a) The Contractor shall register all staff required to attend CWTI training by each individual staff member applying for a JJOLT secure user ID and password. To apply for a JJOLT user ID from the public DHS website, please visit <http://www.michigan.gov/dhs> or the preferred method by going directly to the CWTI web site at <http://www.michiganchildwelfaretraining.com/>
- b) Once applicable Contractor staff is registered with JJOLT, staff will have access to Omni Track Plus (OTP) within JJOLT to register for training. The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To cancel or change training registration, the Contractor will need to directly contact CWTI by telephone or email.
- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by DHS at least seven (7) days before the training commences.

b. Foster Home Certification Supervisory Staff: Training Requirements

The Contractor shall ensure that all foster home certification supervisors successfully complete certification training provided by BCAL, prior to assuming supervisory responsibility for social service workers who perform foster home licensing functions.

c. Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of CWTI training and BCAL Certification Training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

7. Relative Licensing

The Contractor may elect to facilitate the licensure of relative caregivers providing care to children in out-of-home placements that are under the direct

Contract Number: PAFC15-33001

care and supervision of DHS. Facilitation of licensure includes but is not limited to the following activities:

- a. Accept referrals of unlicensed relative caregivers from DHS, for possible licensure as a foster family home, based on the Contractor's capacity to complete the licensing process.
- b. On forms provided by DHS, and when requested by DHS, the Contractor shall report to DHS monthly on the number and characteristics of unlicensed relative homes and the children in those homes, and on progress in licensing the homes.

8. Adoption and Foster Care Analysis Reporting System Requirements

For every child placed for adoption the Contractor shall submit to the DHS Monitor the completed Adoption Finalization Report (DHS-3154-A) within fourteen (14) days of adoption finalization.

The Contractor shall enter all required child and family information into the Michigan Statewide Automated Child Welfare System (MiSACWIS) to enable DHS to comply with Federal Adoption and Foster Care Analysis and Reporting System (AFCARS) reporting requirements. Failure to comply with this reporting requirement shall result in a penalty for the Contractor as specified in Section II. B. 6. of this Agreement.

9. Payment Resolution

When the Contractor's financial records reveal that payment for a child has not been provided by DHS within 90 days of the date of service, the Contractor will seek payment resolution by contacting the direct supervisor of the assigned DHS worker in writing. Any concerns over a payment authorization or issuance that cannot be resolved within 60 days of the written notice must be reported to the DHS County Director for immediate resolution. The Contractor will apprise DHS of any ongoing, unresolved payment concerns.

10. Additional Provisions

The Contractor shall comply with the provisions of:

- a. 1984 Public Act, 114, as amended being M.C.L. 3.711 *et seq.*, Interstate Compact on the Placement of Children.
- b. 1975 Public Act 238, as amended, being M.C.L. 722.621 *et seq.*, Child Protection Law.
- c. 1982 Public Act 162, as amended, being M.C.L. 450.2101 *et seq.*, Michigan Nonprofit Corporation Act.
- d. 1994 Public Act 204, as amended, being M.C.L. 722.921 *et seq.*, Michigan Children's Ombudsman Act.
- e. 1973 Public Act 116, as amended, being M.C.L. 722.111 *et seq.*, Michigan Child Care Organization Act.

Contract Number: PAFC15-33001

- f. 1939 Public Act 288, Chapter X, being M.C.L. 710.1 *et seq.*, Michigan Adoption Code.
- g. 1984 Public Act 203, as amended, being M.C.L. 722.951 *et seq.*, Michigan Foster Care and Adoption Services Act.
- h. The Social Security Act as amended by the Multiethnic Placement Act of 1994 (MEPA); Public Law 103-382, and as amended by Section 1808 of the Small Business Job Protection, the Interethnic Adoption Provision (IEAP).
- i. The Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.*
- j. 1976 Public Act 453, as amended, being M.C.L. 37.2101 *et seq.*, Elliott-Larsen Civil Rights Act.

11. Case Management

The Contractor shall provide case management services in accordance with the "Active Efforts" requirements established in the Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C 1901 *et seq.* These requirements include but are not limited to the following:

- a. Establish an American Indian child as a member of a Tribe in accordance with ICWA and as defined in the DHS Native American Affairs (NAA) manual.
- b. Provide "Active Efforts" case management services in with in accordance with ICWA and as defined in the NAA manual.
- c. Provide placement of American Indian children in accordance with "Placement Priorities" as established in ICWA and defined in the NAA manual.
- d. Provide "Expert Witness" testimony in accordance with ICWA and as defined in the NAA manual.
- e. Provide services to American Indian families within the context of their culture and ethnicity. Maintaining knowledge in the following:
 - 1) How culture and rituals influence parenting decisions.
 - 2) Determine what services and supports will be most effective.
 - 3) Knowledge and respect of tribal practices.

12. Private Agency MiSACWIS

The Contractor shall ensure that Foster Care/Social Service staff has access to the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) through a web-based interface. Requirements for MiSACWIS for CPA Contracts may be found at http://www.michigan.gov/dhs/0,4562.7-124-5455_7199---.00.html

F. Performance Measures

During the period of this Agreement, the Contractor shall work toward the achievement of the performance measures listed below.

Contract Number: PAFC15-33001

DHS shall obtain data from its systems on a quarterly basis to be determined by DHS, in a format specified by DHS.

1. Placement Stability:

Children supervised by the Contractor shall have no more than two placement settings while supervised by the individual Contractor's program, using the following minimum acceptable standards:

- a. 0 – 365 days = 86% or more will have no more than two placement settings
- b. 366 – 730 days = 73% or more will have no more than two placement settings
- c. 731 + days = 45% or more will have no more than two placement settings

2. Timeliness of Reunification:

No fewer than 43% of children supervised by the Contractor for 30 days or more shall be discharged from foster care to the home of a parent or legal guardian within 12 months of removal.

3. Permanency of Reunification:

No more than 4% of children supervised by the Contractor who were discharged from foster care to reunification will re-enter foster care in less than 12 months from the date of discharge.

4. Timeliness of Adoptions:

No fewer than 36.6% of children supervised by the Contractor for 30 days or more shall be discharged from foster care to a finalized adoption within 24 months of removal.

5. Discharge to Permanency for Children in Foster Care for Long Periods of Time:

No fewer than 29.1% of children supervised by the Contractor for the most recent 24 months shall be discharged to a permanent placement prior to their 18th birthday. Permanent placement is defined as Adoption, Guardianship or Reunification.

6. Legally-Free Children in Foster Care for Long Period of Time Who Are Discharged to Permanency:

No fewer than 98% of children supervised by the Contractor for the most recent 12 months and legally free for adoption shall be discharged to a permanent placement prior to their 18th birthday. Permanent placement is defined as Adoption, Guardianship or Reunification. (A discharge to Reunification for children "legally free" occurs when they are placed with a relative for 6 months or longer. This is for AFCARS reporting purposes by DHS.).

7. Sibling Placement:

Contract Number: PAFC15-33001

No fewer than 90% of children supervised by the Contractor shall be placed with all members of their sibling group (out of home minor siblings only) unless it has been determined that the placement with the siblings is contrary to the best interests of the children. Contrary to the best interests of the children is defined as:

- a. Placement together is harmful to one or more of the siblings; or
- b. One of the siblings has exceptional needs that can only be met in a specialized program or facility; or
- c. The size of the sibling group makes such placement impractical, notwithstanding diligent efforts to place the group together.

G. Availability of Outside Reviews and Audits

The Contractor shall make available to DHS copies of any outside reviews, non-redacted FOIA requests, or audits relating to the contracted program.

H. Financial Audit Requirements

This agreement constitutes a vendor relationship with DHS.

1. The Contractor shall have an annual financial audit conducted by an independent certified public accountant. Audits must be conducted in compliance with Generally Accepted Accounting Principles (GAAP) and all federal audit requirements.
2. The Contractor shall submit to DHS – Office of Contracts and Purchasing, no later than the fifteenth day of the ninth month following the end of the Contractor's fiscal year, copies of:
 - a. Audited financial statements.
 - b. The Independent Auditor's Report to the Contractor.
 - c. A Supplemental Schedule of Expenditures (SSE) completed in accordance with the SSE instructions. The SSE shall identify actual costs incurred for services performed under this Agreement for the period covered in the annual financial audit. Failure to submit the SSE with the annual financial audit may result in delay in payment or non-payment by DHS for administrative costs incurred or services rendered by the Contractor. Instructions for the SSE can be found at http://www.michigan.gov/dhs/0,4562,7-124-5455_7199--,00.html

Reports shall be submitted electronically to DHS-OCP@michigan.gov.

3. If an OMB-A133 Audit is required because of other Federal funding sources, the Contractor is required to provide the Audit report and all opinions and management letters to DHS-OCP@michigan.gov. The Audit

Contract Number: PAFC15-33001

must be submitted no later than the fifteenth day of the ninth month following the end of the Contractor's fiscal year.

I. Billing Procedure

The Contractor shall submit through MiSACWIS the bi-weekly roster for any youth in the Contractor's care per the instructions within MiSACWIS. The billing shall indicate the units of service provided by the Contractor and shall be submitted to DHS within 30 days from the end of the billing period.

1. The Contractor shall be paid for Trial Reunification services specified in the agreement not to exceed 180 days from the child's placement in the parental home.
 - a. The Contractor must submit the following on a monthly basis:
 - i. A completed DHS 1582 CS Payment Voucher
 - ii. A case listing that contains the following child identifying information:
 - 1) Placing Agency Provider ID
 - 2) Agency Name
 - 3) MiSACWIS log ID if known
 - 4) Child last name
 - 5) Child first name
 - 6) Recipient ID
 - 7) Foster Care case number
 - 8) Billing start date
 - 9) Billing end date
 - 10) Number of days to pay
 - 11) American Indian Y/N
 - 12) Date of court order commencing the Trial Reunification, date the foster care case was dismissed by the court and/or date the child reentered a foster care placement

Please submit the information electronically to:

DHS-FederalComplianceDivision@michigan.gov

The subject line shall read: Trial Reunification Payment

2. Classroom Training Reimbursement

The Contractor must submit a signed and dated agency letterhead memo attached to the DHS-1582 Payment Voucher that includes the following information:

- a. Worker name,
- b. Training, type, i.e. PSST, PSI etc.
- c. Training dates (time span in training)
- d. Amount of reimbursement requested.

Contract Number: PAFC15-33001

- e. A copy of the transcript reflecting the completion of the training for each foster care worker and supervisor covered by the payment voucher. This is required before accounting will issue payment.
- f. Memo signed by senior management; not the individual who attended training.

Please submit the requested information electronically to:

DHS-FederalComplianceDivision@michigan.gov

The subject line shall read: Training Payment

3. Travel Training Reimbursement

- a. The Contractor must submit:
 - i. Certification letter on agency letterhead signed and dated by senior management to include:
 - 1) Agency Federal ID Number
 - 2) Exact trainee name as registered in OmniTrack Plus (formerly JJOLT)
 - 3) Exact class name
 - 4) Beginning and ending travel dates
 - 5) Amount of reimbursement requested
 - ii. DHS-1582 Payment Voucher.
 - iii. DHS-1582 TV-NSE for each trainee.
 - iv. MapQuest (or equivalent) printouts for each travel route.
 - v. All original receipts.
 - vi. Transcripts showing the training completed.

Please submit the above information to:

Ingham County DHS/OWDT
Attention: Travel Reimbursement
PO Box 30088
5303 S. Cedar Street
Lansing, MI 48911

II. DHS RESPONSIBILITIES

A. Referrals

Upon placement, DHS shall provide the Contractor at minimum, with a court order, a Medical Authorization Card (DHS-3762), and the Individual Service Agreement (DHS-3600).

B. Payment

Contract Number: PAFC15-33001

DHS shall open and process payment within 30 days of placement, with payment authorization effective the date of the child's placement with the Contractor.

1. The entire rate paid to the Contractor for board and care, clothing and allowance shall be paid by the Contractor to the foster families providing the family foster care.
2. The Contractor's administrative rate(s) for services provided under this Agreement shall be:

<u>SVC. Code</u>	<u>Per Diem Rate</u>	<u>Effective</u>
0780	\$37.00	10/01/2013
0782	\$28.00	10/01/2013
TR	\$37.00	10/01/2013
0838	*\$2.50	10/01/2013
Legislative Increase	\$3.00	10/01/2013

*The above rate is only to be used for American Indian Children

The \$3 per diem Legislative Increase will be paid for DHS children whose fund sources include County Child Care Fund, Title IV-E and State Ward Board and Care; and who are classified as General Foster Care, service code 0780. This increase will not be paid for DHS children who are classified as General Independent Living (service code 0782), or children classified as Trial Reunification.

If the Contractor has an adoption agreement with DHS and fails to register a child on the Michigan Adoption Resource Exchange (MARE) as required in that agreement, the Contractor's Foster Care administrative rate for that child shall be reduced by twenty percent (20%) until the child is registered.

The contractor will receive reimbursement subject to appropriations for relative licensure as outlined in that years State fiscal appropriation.

If a Contractor does not submit the financial cost reports as described in Section I., CONTRACTOR RESPONSIBILITIES, the per diem administrative rate shall be reduced by \$3.00 until contractor becomes compliant with the reporting requirements.

3. The Contractor shall be paid for family foster care services specified in this Agreement at a board and care rate established by DHS. A determination of care rate may be established by DHS in accordance with the FOM when extraordinary care or expense is required of the foster parent. Special rates must have the approval of the Director of DHS' local office responsible for the supervision of the child for whom foster care is provided.
4. Payment for additional services costs not included in the per diem rate may be authorized in accordance with the FOM.

Contract Number: PAFC15-33001

When the Contractor's financial records reveal that a payment for a child has not been provided by DHS within 90 days of their acceptance of the child for case management services, the Contractor will contact the DHS County Director in writing seeking payment resolution. The Contractor shall apprise DHS of any concerns over a payment amount that cannot be reconciled at the staff level within 90 days.

5. Upon placement, DHS shall ensure that the child(ren) has adequate clothing as defined by the Clothing Inventory Checklist (DHS-3377) or shall reimburse the Contractor up to the approved limit allowed for clothing.
6. Inability of DHS to comply with the federal reporting requirements of AFCARS due to failure of the Contractor to fulfill AFCARS related reporting requirements shall result in a three percent (3%) reduction in the Contractor's administrative rate for the six month period subsequent to the due date of the AFCARS report to the Federal government.

7. Foster Care Training Payments

Payments will be made for eligible training which commenced after January 1, 2012.

A payment will be made to the Contractor for each staff that completes training and passes competency tests as required in Section VI-Staff Qualifications, Training, Caseloads and Supervision of the Modified Settlement Agreement according to the following schedule:

a. Completion of the Child Welfare Caseworker Training

Payment will be \$6,000 total, calculated on a per diem basis, for completion of CWTI-PSI that includes a minimum of 9 weeks of competency-based classroom and field training if the caseworker passes the competency evaluation within 16 weeks of hire.

b. Completion of the Child Welfare Certificate (CWC) Training

Payment will be \$3,000 total, calculated on a per diem basis, for completion of the CWTI-CWC that includes a minimum of five weeks of competency-based classroom and field training if the caseworker certified certificate holder passes the competency evaluation.

c. Completion of the Child Welfare Supervisor Training

Payment will be \$1,500 total, calculated on a per diem basis, for completion of the Supervisor Training that includes a minimum of one week within 90 days of hire/promotion, if the supervisor passes the competency evaluation.

Contract Number: PAFC15-33001

d. Completion of the Child Welfare Transfer Training

The two week foster care PSTT shall be completed within six months of hire.

Payment will be \$2,800 for the completion of the foster care PSTT training. The training is the same as the Foster Care Core Training for Foster Care caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated.

8. For all Contractor staff hired on or after May 1, 1998 attending required CWTI-PSI, PSTT, and supervisor training, DHS-CWTI shall reimburse the Contractor at the Contractor's normal rate of reimbursement or State rates, whichever is less for staff trainee expenditures incurred as part of CWTI attendance. DHS-CWTI does not cover travel reimbursement for in-service training. Travel reimbursement shall be limited to lodging, mileage and parking with the following conditions:
 - a. For each trainee who attends the training session, DHS shall reimburse the Contractor up to five (5) nights lodging per week if lodging expense is incurred. If training continues for two consecutive weeks or longer and the cost of lodging is less than the mileage cost to travel to and from the Contractor's facility over the intervening weekend, the Contractor may request the director of Office of Workforce Development and Training in advance for a travel exception for weekend lodging.
 - b. For each mile of travel to a CWTI training session closest to the Contractor's site, DHS shall reimburse the Contractor for mileage to and from the training and the trainee's assigned work location or home, whichever is closer. The applicable State rate for mileage shall be the lesser of the Contractor's prevailing rate or the State's standard rate.
 - c. Parking shall be reimbursed at actual cost, documented with a receipt.
 - d. DHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from BCAL. Refer to the CWTI web site for current reimbursement information for CWTI training at <http://www.michiganchildwelfaretraining.com/Training/Travel.aspx>
9. The costs of all services provided under this Agreement are included in the above rate(s) unless otherwise noted in this Agreement.

III. GENERAL PROVISIONS – PRIVATE, NON-PROFIT AND PRIVATE, PROPRIETARY

Contract Number: PAFC15-33001

A. Options to Renew

At the discretion of DHS, this Agreement may be renewed in writing by an amendment not less than 30 days before its expiration. This Agreement may be renewed for up to two additional one-year periods.

B. Amendment

1. Federal or State Laws or Regulations

The Contractor shall, upon request of DHS and receipt of a proposed amendment, amend this Agreement, if and when required in the opinion of DHS, due to the revision of federal or state laws or regulations. If the Contractor refuses to sign such amendment within 15 days after receipt, this Agreement shall terminate upon such refusal. This Agreement may otherwise be amended only by the written consent of all the parties hereto.

2. Change Requests

DHS reserves the right to request from time to time any changes to the requirements and specifications of this Agreement and the work to be performed by the Contractor under this Agreement. During the course of ordinary business, it may become necessary for DHS to discontinue certain business practices or create additional services/deliverables. At a minimum, to the extent applicable, DHS will require the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify DHS, the Contractor has no right to claim thereafter that it is entitled to additional compensation in accordance with this Agreement for performing that service or providing that deliverable.

Change Requests:

- a. By giving Contractor written notice within a reasonable time, DHS must be entitled to accept a Contractor proposal for change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a change, a written amendment must be prepared and issued under this Agreement, describing the change and its effects on the services and any affected components of this Agreement.
- b. No proposed change must be performed until the proposed change has been specified in a duly executed amendment issued by DHS.

Contract Number: PAFC15-33001

- c. If DHS requests or directs the Contractor to perform any activities that Contractor believes constitute a change, the Contractor must notify DHS that it believes the requested activities are a change before beginning to work on the requested activities. If the Contractor fails to notify DHS before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Agreement and then ceases performing that work, the Contractor must, at the request of DHS, retract any out-of-scope work that would adversely affect this Agreement.

C. Subcontracts

The Contractor shall not assign this Agreement or subcontract this Agreement to other parties without obtaining prior written approval of the DHS Office of Contracts and Purchasing. DHS, as a condition of granting such approval, shall require that such assignees or subcontractors shall be subject to all conditions and provisions of this Agreement including Criminal Record and Central Registry background checks when applicable. The Contractor shall be responsible for the performance of all assignees or subcontractors.

If the Contractor is a subrecipient and creates a subrecipient through subcontracting, the Contractor must monitor the subcontractor to ensure compliance with federal requirements.

If subcontracting, the Contractor must obligate the subcontractors to maintain the confidentiality of DHS' client information in conformance with state and federal requirements. At DHS' request, any employee of the Contractor and of any subcontractor having access or continued access to DHS' confidential information may be required to execute an acknowledgment that the employee has been advised of the Contractor's and the subcontractor's obligations under this section and of the employee's obligation to DHS, the Contractor or subcontractor, as the case may be, to protect such confidential information from unauthorized use or disclosure.

D. Confidentiality

1. The Contractor and DHS each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this section, "confidential information" of the Contractor must mean all non-public proprietary information of the Contractor (other than confidential information of DHS as defined below) which is marked confidential, restricted, proprietary or with a similar designation. Confidential information of DHS must mean any information which is retained in confidence by DHS (or otherwise required to be held in confidence by DHS under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to the Contractor by DHS under its performance under this Agreement, is marked

Contract Number: PAFC15-33001

as confidential, proprietary or with a similar designation by DHS. Confidential information includes information made privileged or confidential under federal and state laws and excludes any information (including this Agreement) that is publicly available under the Michigan Freedom Of Information Act.

2. DHS and the Contractor will each use at least the same degree of care to prevent disclosing to third parties the confidential information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither the Contractor nor DHS will (i) make any use of the confidential information of the other except as contemplated by this Agreement, (ii) acquire any right in or assert any lien against the confidential information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's confidential information to the other party. Each party will limit disclosure of the other party's confidential information to employees and subcontractors who must have access to fulfill the purposes of this Agreement. Disclosure to, and use by, a subcontractor is permissible where (A) use of a subcontractor is authorized under this Agreement, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's scope of responsibility, and (C) the Contractor obligates the subcontractor in a written contract to maintain DHS's confidential information in confidence. At DHS's request, any employee of the Contractor and of any subcontractor having access or continued access to DHS's confidential information may be required to execute an acknowledgement that the employee has been advised of the Contractor's and the subcontractor's obligations under this section and of the employee's obligation to the Contractor or subcontractor, as the case may be, to protect the confidential information from unauthorized use or disclosure.

Promptly upon termination or cancellation of this Agreement for any reason, the Contractor must certify to DHS that the Contractor has destroyed all DHS confidential information.

E. Compliance with Rules and Regulations

1. Compliance with Federal and State Requirements

The Contractor shall comply with all federal, state and local statutes, regulations and administrative rules, and any amendments thereto, as they may apply to the performance of this Agreement. This shall include, but shall not be limited to, those laws and regulations that could have a material effect on the federal program.

In addition, the Contractor shall comply with all federal grant agreements, provisions stated within the Catalog of Federal Domestic Assistance

Contract Number: PAFC15-33001

(CFDA), and state and federal laws and other rules and regulations related to this funding source that occur over the term of the Agreement.

The Contractor shall comply with all Federal Office of Management and Budget circulars that apply to the federal funding provided under this Agreement, which include but are not limited to:

- . A-122 for cost principles, Relocated to 2 CFR, Part 230
- . A-110 for administrative requirements, Relocated to 2 CFR, Part 215
- . A-133 for audit requirements
- . Special Federal Grant Provisions

The Contractor shall keep informed of federal, state, and local laws, ordinances, rules, regulations, orders, and decrees of bodies or tribunals having any jurisdiction/authority that in any manner affects those engaged in or employed on the work done under this Agreement or that in any manner affects the conduct of the work done under this Agreement.

2. Civil Service Rules and Regulations

The state of Michigan is obligated to comply with Article XI, Section 5, of the Michigan Constitution and applicable civil service rules and regulations. Other provisions of this Agreement notwithstanding, the state personnel director is authorized to disapprove contractual disbursements for personal services if the state personnel director determines that this Agreement violates Article XI, Section 5 of the Michigan Constitution or applicable civil service rules and regulations.

3. Compliance with Civil Rights, Other Laws

The Contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight or marital status pursuant to Title VI and VII of the Civil Rights Act, 42 USC 2000d et seq., and the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.

The Contractor shall also comply with the provisions of:

- . The Americans with Disabilities Act of 1990, 42 USC 12101 et seq.
- . The Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101 et seq.
- . Section 504 of the Federal Rehabilitation Act of 1973, 29 USC 791 et seq., which states that no employee or client or otherwise qualified handicapped individual shall, solely by reason of this handicap, be

Contract Number: PAFC15-33001

excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

. HIPAA regulations at 42 CFR Part 160 and Part 164.

4. Freedom of Information Act

All information in this Agreement is subject to the provisions of the Freedom of Information Act. 1976 Public Act 442, as amended, MCL 15.231, et seq.

5. Prohibition Against Using Funds to Support Religious Activities

The Contractor shall not use financial funds administered by the state or federal government to support inherently religious activities, such as worship, religious instruction, or proselytization. If the Contractor engages in such activities, it must offer them separately, in time or location, from the programs or services funded with state or federal assistance, and participation must be voluntary for the beneficiaries of the state or federally funded programs or services.

The Contractor shall strictly adhere to provisions of federal law and regulation, including those found in 42 USC 604a.

F. Examination and Maintenance of Records

The Contractor shall permit DHS or any of its authorized agents access to the facilities being utilized at any reasonable time to observe the operation of the program. Further, the Contractor shall maintain/retain all books, records or other documents (electronic or otherwise) relevant to this Agreement at all times during the term of this Agreement and any extension of this Agreement and for three years after the later of the expiration date or final payment under this Agreement, at the Contractor's cost, and shall send copies of said books, records or other documents to DHS upon request. Federal auditors and any persons duly authorized by DHS shall have full access to and the right to examine and audit any of said material during said period. If an audit is initiated prior to the expiration of the three-year period after the later of the expiration date or final payment under this Agreement and extends past that period, all documents shall be maintained until the audit is completed. DHS shall provide findings and recommendations of audits to the Contractor. DHS shall adjust future payments or final payment if the findings of an audit indicate over payment to the Contractor in any period prior to the audit. If no payments are due and owing the Contractor, the Contractor shall refund all amounts which may be due DHS within 60 days notice by DHS. The Contractor shall assure, as a condition of any sale or transfer of ownership of the Contractor agency, that the new purchasers or owner maintains the above-described books, records or other documents for any unexpired portion of the term of this Agreement and three-year period after the later of the expiration date or final payment under this Agreement or the Contractor shall otherwise maintain said records as DHS may direct. If business

Contract Number: PAFC15-33001

operations cease, the Contractor shall maintain records as DHS may direct. The Contractor shall notify DHS when and if the Contractor operations cease during the three-year period after the later of the expiration date or final payment under this Agreement and provide for appropriate storage of records at the Contractor's expense.

The Contractor shall, as a provision of this Agreement, assure that DHS may make reasonable inquiries of the auditor relating to audit workpapers and, furthermore, that DHS may review the auditor's workpapers in support of the audit.

G. Reporting and Monitoring

1. Reporting

The Contractor shall comply with all program and fiscal reporting procedures as are or may hereinafter be established by DHS. The Contractor shall also comply with all reporting procedures established by DHS in completion of progress reports at time intervals, on forms, in formats, and by means specified by DHS. In particular, reports or billing documents denoting event dates shall record month, day and year as specified by DHS. In all electronic filings, four digits shall be used to designate year. Any additional reports as deemed necessary by DHS shall be made and submitted by the Contractor upon request.

2. Monitoring Requirements

DHS reserves the right to perform scheduled and unscheduled on-site visits during normal business hours, to monitor the Contractor's activities under this Agreement at any time, either during the term, or within three years after termination of the Agreement. The Contractor shall cooperate with DHS during the monitoring process by making available all records, facilities, and other resources necessary to perform the review.

If DHS detects noncompliance with this Agreement, and/or questioned costs during the course of its review, these items shall be identified and conveyed to the Contractor in an exit conference. DHS shall provide the Contractor with a detailed written report of these findings within 60 days of the exit conference. The Contractor is required to address each item in DHS' report by providing a Corrective Action Plan (CAP) to eliminate or correct each issue of noncompliance. The Contractor shall submit the CAP to DHS within 60 days from issuance of DHS' report.

If DHS identifies questioned costs that cannot be substantiated, DHS may, at its discretion, and after consultation with the Contractor, require the Contractor to submit a revised "Statement of Expenditures" to reflect adjustment for disallowed costs. Submission of revised billings to DHS shall be made within a time schedule established by DHS and the Contractor. If the Contractor fails to comply with monitoring requirements as set forth in

Contract Number: PAFC15-33001

this Agreement, and within allotted time frames mutually established, DHS may, at its discretion, invoke sanctions on the Contractor, which may include, but are not limited to, actions to collect disallowed costs and/or cancellation of the Agreements.

3. **Audit Reports that Contain a Going Concern Statement**

If an audit firm conducts an audit of the Contractor and issues an audit report with a finding of a Going Concern, the Contractor must submit this audit report to the DHS Office of Monitoring and Internal Controls within 10 days from the date of the audit report. The submission of this audit report to DHS is required regardless of whether an audit is required under this Agreement.

A Contractor receiving a Going Concern must submit a financial plan to the DHS Office of Monitoring and Internal Controls no later than 25 days from the date of the audit report issued by the audit firm. The financial plan must be approved by DHS. Failure of the Contractor to either timely submit the audit report with the Going Concern, or timely submit a financial plan, or DHS' rejection of the Contractor's financial plan, are grounds for immediately terminating this Agreement.

Mailing address for all audit information:

Michigan Department of Human Services
Office of Monitoring and Internal Controls
Grand Tower, Suite 1112
PO Box 30037
Lansing, MI 48909

H. **Fees and Other Sources of Funding**

The Contractor guarantees that any claims made to DHS under this Agreement shall not be financed by any source other than DHS under the terms of this Agreement. If funding is received through any other source, the Contractor agrees to deduct from the amount billed to DHS the greater of either the fee amounts, or the actual costs of the services provided.

The Contractor may not accept reimbursement from a client unless the Agreement specifically authorizes such reimbursement in the "Contractor Responsibility" section. In such case, a detailed fee scale and criteria for charging the fee must be included. If the Contractor accepts reimbursement from a client in accordance with the terms of the Agreement, the Contractor shall deduct these fees from billings to DHS.

Other third party funding sources, e.g., insurance companies, may be billed for contracted client services. Third party reimbursement shall be considered payment in full unless the third party fund source requires a co-pay, in which case

Contract Number: PAFC15-33001

DHS may be billed for the amount of the co-pay. No supplemental billing is allowed.

I. Publication - Approval and Copyright

The state of Michigan shall have copyright, property and publication rights in all written or visual material or other work products developed in connection with this Agreement. The Contractor shall not publish or distribute any printed or visual material relating to the services provided under this Agreement without prior written permission of the state of Michigan.

If the Contractor or an agent of the Contractor creates and/or reproduces under this Agreement materials which are developed for consumption by the general public or as a general information tool and which are funded in whole or in part with state of Michigan funds, the Contractor or its agent must include one of the statements referenced below, as they apply:

- . This program is funded by the state of Michigan

OR

- . This program is funded in part by the state of Michigan

News releases (including promotional literature and commercial advertisements) pertaining to this Agreement shall not be made without prior written DHS approval, and then only in accordance with the explicit written instructions from DHS. No results of the activities associated with the Agreement are to be released without prior written approval of DHS and then only to persons designated.

J. Agreement Inclusiveness

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

K. Certifications Regarding Lobbying

As required by section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the Contractor certifies to the best of its knowledge that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons influencing or attempting to influence an officer or employee of an department, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering

Contract Number: PAFC15-33001

into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any department, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard form – LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

L. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The Contractor certifies to the best of its knowledge that they and their principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal or state department or agency.
2. Have not within a three-year period preceding this Agreement been convicted of or had civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in 28 CFR 67, et sec.
4. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause and default.

Where the parties are unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this Agreement.

Contract Number: PAFC15-33001

The Contractor shall promptly notify DHS of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractors, or any of the foregoing entities' then current officers or directors during the term of this Agreement and three years thereafter. All notices shall be provided in writing to DHS within 15 business days after the Contractor learns about any such criminal or civil investigations and within 15 days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements, which are prevented from disclosure by the terms of the settlement, shall be annotated as such. However, the Contractor shall disclose if any terms of such settlement would impede the Contractor's performance of this Agreement. The Contractor may rely on similar good faith certifications of its subcontractors, which certification shall be available for inspection at the option of DHS.

The Contractor certifies to the best of its knowledge that within the past three years, the Contractor has not;

1. Failed to substantially perform a state contract, agreement, or subcontract according to its terms, conditions, and specifications within specified time limits.
2. Refused to provide information or documents required by a contract or agreement including, but not limited to information or documents necessary for monitoring contract performance.
3. Failed to respond to requests for information regarding contract or agreement compliance, or accumulated repeated substantiated complaints regarding performance of a contract or agreement.
4. Failed to perform a state contract, agreement, or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.

The Contractor shall include Section L. (Certification Regarding Debarment, Suspension, and Other Responsibility Matters) language as written above in all subcontracts with other parties.

The Contractor shall require each primary subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether at of the time of the award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the state of Michigan. The Contractor shall then inform DHS of the subcontractor's status and reasons for the Contractor's decision to use such subcontractor, if the Contractor so decides.

If it is determined that the Contractor knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, DHS may immediately terminate this Agreement.

Contract Number: PAFC15-33001

If the state finds that grounds to debar exist, it shall send notice to the Contractor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the Contractor does not respond with a written request for a hearing within 20 calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight years. After the debarment period expires, the Contractor may reapply for inclusion on bidder lists through the regular application process by authority of Executive Order 2003-1.

M. Governing Law

This Agreement shall in all respects be governed by, and construed according to, the substantive laws of the state of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

Any dispute arising from this Agreement shall be resolved in the state of Michigan and the Contractor expressly consents to personal jurisdiction in Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue. Contractor agrees to appoint agents in the State of Michigan of Michigan to receive service of process.

N. Severability

Each provision of this Agreement shall be deemed to be severable from all other provisions of this Agreement and, if one or more of the provisions of this Agreement shall be declared invalid, the remaining provisions of this Agreement shall remain in full force and effect.

O. Reporting of Retiree Employment

All other provisions of this Agreement notwithstanding, the Contractor shall provide written notification within 15 days of hiring to DHS Office of Human Resources (HR) the name, social security number, and work site of any state of Michigan retiree under their employ. Failure to notify HR within the allotted time period may result in the disallowance of all costs related to this Agreement up to the time the proper notification is received by HR.

P. Disputes

The Contractor shall notify DHS in writing of intent to pursue a claim against DHS for breach of any terms of this Agreement. No suit may be commenced by the Contractor for breach of this Agreement prior to the expiration of 90 days from the date of such notification. Within this 90 day period, the Contractor, at the request of DHS, must meet with the Director of DHS or designee for the purpose of attempting resolution of the dispute.

Contract Number: PAFC15-33001

Q. Termination/Cancellation

1. Notice and Right to Cure

If the Contractor breaches this Agreement, and DHS, in its sole discretion, determines that the breach is curable, then DHS must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if DHS determines, in its sole discretion, that the breach poses a serious and imminent threat to the health and safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2. Termination for Cause

DHS may terminate this Agreement, for cause, by notifying the Contractor in writing, if the Contractor (a) breaches any of its material duties or obligations under this Agreement, or (b) fails to cure a breach within the time period specified in the written notice of breach provided by DHS.

If this Agreement is terminated for cause, the Contractor must pay all costs incurred by DHS in terminating this Agreement, including but not limited to, state administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs DHS may incur to procure the services/deliverables required by this Agreement from other sources.

3. Termination for Convenience

DHS may terminate this Agreement for its convenience, in whole or part, if DHS determines that a termination is in DHS's best interest. Reasons for the termination must be left to the sole discretion of DHS and may include, but not necessarily be limited to (a) DHS no longer needs the services or products specified in this Agreement, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the services no longer practical or feasible, (c) unacceptable prices for additional services or new work requested by DHS, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by DHS. DHS may terminate this Agreement for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination.

4. Termination for Non-Appropriation

- a. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation or availability of funds for this Agreement. If funds to enable DHS to effect continued payment under this Agreement are not appropriated or otherwise made available, DHS must terminate this Agreement and

Contract Number: PAFC15-33001

all affected statements of work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. DHS must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if DHS receives notice of the final decision less than 30 days before the funding cutoff).

- b. If funding for this Agreement is reduced by law, or funds to pay Contractor for the agreed-to level of the services or production of deliverables to be provided by Contractor are not appropriated or otherwise unavailable, DHS may, upon 30 days notice to Contractor, reduce the level of the services or change the production of deliverables in the manner and for the periods of time as DHS may elect. The charges payable under this Agreement will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.
- c. If DHS terminates this Agreement, eliminates certain deliverables, or reduces the level of services to be provided by Contractor under this section, DHS will pay Contractor for all work-in-process performed through the effective date of the termination or reduction in level, as the case may be and as determined by DHS, to the extent funds are available.

5. Termination for Criminal Conviction

DHS may terminate this Agreement immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a state, public or private contract, agreement, or subcontract.

6. Rights and Obligations upon Termination

- a. If DHS terminates this Agreement for any reason, the Contractor must stop all work as specified in the notice of termination, and take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Agreement.
- b. If DHS terminates this Agreement before its expiration for its own convenience, DHS must pay Contractor for all charges due for services provided before the date of termination and, if applicable, as a separate item of payment under this Agreement, for work in process, on a percentage of completion basis at the level of completion determined by DHS. All completed or partially completed

Contract Number: PAFC15-33001

deliverables prepared by Contractor under this Agreement, at the option of DHS, becomes DHS's property, and Contractor is entitled to receive equitable fair compensation for the deliverables. Regardless of the basis for the termination, DHS is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to services not actually performed for DHS.

- c. Upon a good faith termination, DHS may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Agreement, and may further pursue completion of the services/deliverables under this Agreement by replacement contract or otherwise as DHS may in its sole judgment deem expedient.

7. Reservation of Rights

Any termination of this Agreement or any statement of work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

8. Termination by Contractor

- a. The Contractor may terminate this Agreement upon 30 days written notice to DHS at any time prior to the completion of the Agreement period.
- b. If DHS breaches this Agreement, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide DHS with written notice of the breach and a time period (not less than 30 days) to cure the breach. The notice of breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Agreement if DHS (a) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Agreement, (b) breaches its other obligations under the Agreement to an extent that makes it impossible or commercially impracticable for the Contractor to perform the services, or (c) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under Section III. P. Disputes before it terminates the Agreement.

R. Transition Responsibilities

If DHS terminates this Agreement, for convenience or cause, or if this Agreement is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by DHS to assist in the orderly transition of equipment, services, software, leases, etc. to

Contract Number: PAFC15-33001

DHS or a third party designated by DHS. If this Agreement expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time.

The Contractor must work with DHS, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help DHS, or a specified third party, maintain the continuity and consistency of the services required by this Agreement.

The Contractor must deliver to DHS any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by DHS.

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Agreement.

S. Stop Work

1. Stop Work Orders

DHS may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Agreement for a period of up to 90 calendar days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section of the Agreement. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, DHS may either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in Section III. Q. Termination/Cancellation.

2. Cancellation or Expiration of Stop Work Order

If a stop work order issued under this section of the Agreement is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The parties shall agree upon an equitable adjustment in the services to be delivered, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and (b) the Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage, provided that, if DHS decides the facts justify the action, DHS may receive and act upon a Contractor proposal submitted at any time

Contract Number: PAFC15-33001

before final payment under the Agreement. Any adjustment must conform to the requirements of Section III. B. Amendment.

T. Closeout Responsibilities

1. Closeout

When this Agreement is concluded or terminated, for any reason, the Contractor shall provide DHS, within 30 days of conclusion or termination, with all financial, performance and other reports required as a condition of this Agreement. DHS shall within the limit of this Agreement reimburse the Contractor for allowable costs not previously reimbursed. The Contractor shall immediately refund to DHS any payments or funds advanced to the Contractor in excess of allowable reimbursable expenditures.

2. Fixed Assets

DHS reserves the right to obtain or transfer title to all fixed assets, real or personal, included in the approved budget of this Agreement, billed in full or in part to DHS by the Contractor. Fixed asset costs billed to DHS shall be limited to straight-line determination or a use charge pre-approved by DHS and shall be used only for the performance of the Agreement unless another use is authorized in writing by DHS.

At least 60 days prior to the end date of this Agreement (which includes cancellation of the Agreement) the Contractor shall report to DHS the book value of all fixed assets and non-consumables purchased with DHS funds and not fully utilized by the end of the Agreement. The Contractor shall request written instructions regarding the disposal of these fixed assets and consumable and/or non-consumable supplies that have been acquired with funds under this Agreement. Any gain on the sale or disposition of fixed assets before completion of this Agreement must be immediately reported and refunded to DHS.

No disposal, sale or transfer of fixed assets purchased under this Agreement in whole or part, may occur without the express written consent of DHS.

3. Continuing Responsibilities

Termination, conclusion, or cancellation of this Agreement shall not be construed as terminating the ongoing responsibilities of the Contractor or rights of DHS contained in Section III, "Examination and Maintenance of Records" and Section III, "Closeout" of this Agreement.

U. Recoupment of Funding and Repayment of Debts.

1. Recoupment of Funding

Contract Number: PAFC15-33001

If the Contractor fails to comply with requirements as set forth in this Agreement, or fails to submit a revised "Statement of Expenditures" within allotted time frames established by DHS in consultation with the Contractor, DHS may, at its discretion, recoup or require the Contractor to reimburse payments made under this Agreement which DHS has determined that the Contractor has been overpaid. The Contractor is liable for any cost incurred by DHS in the recoupment of any funding.

Upon notification by DHS that repayment is required, the Contractor shall make payment directly to DHS within 30 days or DHS may withhold current or future payments made under this or any other agreements, current or future, between DHS and the Contractor.

If the Contractor fails to: (1) correct noncompliance activities identified by DHS, (2) submit revised billings as requested as part of a Corrective Action Plan when required; or (3) remit overpayments or make arrangements to have the overpayments deducted from future payments within 30 days, such failure shall constitute grounds to terminate immediately any or all of DHS' agreements with the Contractor. DHS shall also report noncompliance of the Contractor to Michigan's Department of Technology, Management and Budget. Such report may result in the Contractor's debarment from further contracts with the state of Michigan.

2. Repayment of Debts and Other Amounts due DHS

By entering into this Agreement, the Contractor agrees to honor all prior repayment agreements established by DHS with the Contractor or Contractor's predecessors. If the Contractor has an outstanding debt due to DHS but does not have a repayment agreement, the Contractor agrees to make monthly payments to DHS at an amount not less than 5% of any outstanding balance and to begin on the date this Agreement is executed.

If the Contractor fails to honor prior repayment agreements, or the Contractor fails to begin repayment on an obligation due DHS that is not subject to a repayment agreement, DHS will initiate the administrative process to reduce payments to the Contractor under this Agreement to recoup the debt. The payment reduction will be made at the amount originally established in the repayment agreement or at an amount not less than 5% of any outstanding balance effective on the date this Agreement is executed.

V. Insurance Coverage

The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect DHS from claims which may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's performance of services under the terms of this Agreement, whether the services are performed by the

Contract Number: PAFC15-33001

Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against DHS, its departments, divisions, agencies, offices, commissions, officers, employees and agents for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Agreement. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

All insurance coverage provided relative to this Agreement is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the state.

DHS, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Agreement.

Unless DHS approves otherwise, the insurers selected by the Contractor must have an A.M. Best rating of A or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by DHS. All policies of insurance required in this Agreement must be issued by companies that have been approved to do business in the state. See www.michigan.gov/lara.

Where specific limits are shown, they are the minimum acceptable limits. If the Contractor's policy contains higher limits, DHS must be entitled to coverage to the extent of the higher limits.

The Contractor must maintain all required insurance coverage throughout the term of this Agreement and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Agreement.

The Contractor must provide, within five business days, written notice to the director of the Office of Contracts and Purchasing (OCP) if any policy required under this Agreement is cancelled. The notice must include the applicable agreement number.

The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

The Contractor is responsible for the payment of all deductibles.

If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without DHS's approval, DHS may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or

Contract Number: PAFC15-33001

companies. DHS may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

In the event DHS approves the representation of DHS by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

The Contractor is required to pay for and provide the following types and amounts of insurance:

1. Commercial General Liability with the following minimum coverage:

\$2,000,000	General Aggregate Limit other than Products/Completed Operations
\$2,000,000	Products/Completed Operations Aggregate Limit
\$1,000,000	Personal & Advertising Injury Limit
\$1,000,000	Each Occurrence Limit

Deductible maximum: \$50,000 Each Occurrence

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as additional insureds on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

2. Motor vehicle insurance with the following minimum coverage:

\$1,000,000 Per Occurrence

3. The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

Contract Number: PAFC15-33001

4. Cyber Liability insurance covering information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

Minimal Limits:

\$1,000,000 Each Occurrence

\$1,000,000 Annual Aggregate

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

5. Employers liability insurance with the following minimum limits:

\$100,000 each incident

\$100,000 each employee by disease

\$500,000 aggregate disease

6. Umbrella or Excess Liability Insurance in a minimum amount of four million dollars (\$4,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$1,000,000.00 each occurrence and \$1,000,000.00 annual aggregate.

Deductible maximum: \$50,000 Per Loss

8. Hired and Non-Owned Motor Vehicle Insurance

Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds, and (2) include a waiver of subrogation.

Minimal Limits:

\$1,000,000 Per Accident

Subcontractor Insurance Coverage

Except where DHS has approved a subcontract with other insurance provisions, the Contractor must require any subcontractor under this Agreement to purchase

and maintain the insurance coverage as described in this section for the Contractor in connection with the performance of work by those subcontractors. Alternatively, the Contractor may include any subcontractors under the Contractor's insurance on the coverage required in this section. Failure of subcontractors to comply with insurance requirements does not limit the Contractor's liability or responsibility.

Certificates of Insurance and Other Requirements

Before this Agreement is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide OCP with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in this section. Each certificate must be on the standard ACORD form or equivalent. The agreement number must be shown on the certificate of insurance to assure correct filing.

W. Indemnification

1. General Indemnification

The Contractor must indemnify, defend and hold harmless DHS from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Agreement and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2. Code Indemnification

The Contractor must indemnify, defend and hold harmless DHS from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

3. Employee Indemnification

In any claims against the state of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under this Agreement must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap

Contract Number: PAFC15-33001

in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

4. Patent/Copyright Infringement Indemnification

The Contractor must indemnify, defend and hold harmless DHS from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against DHS to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in DHS's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for DHS the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to DHS's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by DHS with appropriate credits to DHS against the Contractor's charges and reimburse DHS for any losses or costs incurred as a consequence of DHS ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend DHS for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of DHS; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by DHS; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Agreement.

5. Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this section continues in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred before expiration or termination.

Contract Number: PAFC15-33001

6. Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under this Agreement.

- a. After DHS receives notice of the action or proceeding involving a claim for which it will seek indemnification, DHS must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from DHS relating to any claim, the Contractor must notify DHS in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before DHS receiving Contractor's Notice of Election, DHS is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by DHS in defending against the claim during that period.
- b. If Contractor delivers a Notice of Election relating to any claim: (i) DHS is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise DHS about the status and progress of the defense; (ii) the Contractor must, at the request of DHS, demonstrate to the reasonable satisfaction of DHS, the Contractor's financial ability to carry out its defense and indemnity obligations under this Agreement; (iii) the Contractor must periodically advise DHS about the status and progress of the defense and must obtain the prior written approval of DHS before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, DHS has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But DHS may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after DHS's receipt of Contractor's information requested by DHS under clause (ii) of this paragraph if DHS determines that the Contractor has failed to demonstrate to the reasonable satisfaction of DHS the Contractor's financial ability to carry out its defense and indemnity obligations under this section. Any litigation activity on behalf of DHS, or any of its subdivisions under this section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents DHS under this section, the insurer's attorney may be required to be designated

Contract Number: PAFC15-33001

as a Special Assistant Attorney General by the Michigan Attorney General.

- c. If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by DHS as provided above, DHS may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify DHS, upon request of DHS, Contractor must promptly reimburse DHS for all the reasonable costs and expenses, including attorney fees.

X. Limitation of Liability

Neither the Contractor nor DHS is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Agreement calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Agreement.

EXHIBIT 3

AGREEMENT NUMBER: PAFC15-33001

AMENDMENT NUMBER: 5

Between

THE STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

And



CONTRACTOR	St. Vincent Catholic Charities
CONTRACTOR ADDRESS	2800 West Willow, Lansing, MI 48917
CONTRACTOR EMAIL	SeykaA@stvcc.org

CONTRACT ADMINISTRATOR	EMAIL
Sarah Goad	goads@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Placing Agency Foster Care		
GEOGRAPHIC AREA	Statewide		
INITIAL EFFECTIVE DATE	10/01/2014	CURRENT EXPIRATION DATE	09/30/2017
CURRENT AGREEMENT VALUE	\$2,685,000.00		
AGREEMENT TYPE	Unit Rate/Actual Cost		

AMENDMENT DESCRIPTION			
EXTEND EXPIRATION DATE	☒ YES	☐ NO	NEW EXPIRATION DATE 09/30/2018
AMENDMENT AMOUNT		ESTIMATED REVISED AGGREGATE AGREEMENT VALUE	
\$1,445,000.00	☒ INCREASE	☐ DECREASE	\$4,130,000.00
NATURE OF CHANGE	This amendment exercises an option year, increases the agreement value and changes language in the agreement.		

The undersigned have the lawful authority to bind the Contractor and the Michigan Department of Health and Human Services (MDHHS) to the terms set forth in this Agreement.

FOR THE CONTRACTOR:

St. Vincent Catholic Charities

A handwritten signature in black ink, appearing to read "Andrea E. Seyka".

Signature of Director or Authorized Designee

ANDREA E. SEYKA

Print Name

4/4/17

Date

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

A handwritten signature in blue ink, appearing to read "Christine H. Sanches".

Signature of Director or Authorized Designee

Christine H. Sanches

Print Name

5.3.17

Date

Agreement Number: PAFC15-33001

Amendment Number: 5

	<u>Agreement Period</u>	<u>Amount</u>
Year 1	10/01/2014 through 09/30/2015	\$895,000.00
Year 2	10/01/2015 through 09/30/2016	\$895,000.00
Year 3	10/01/2016 through 09/30/2017	\$895,000.00
Year 4	10/01/2017 through 09/30/2018	\$1,445,000.00
Total Amount:		\$4,130,000.00

Check all agreement years affected by this amendment:

☐ Year 1 ☐ Year 2 ☒ Year 3
☒ Year 4 ☐ Year 5 ☐ Year 6

**STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

WHEREAS, the Michigan Department of Health and Human Services (hereinafter referred to as "MDHHS") entered into a contractual Agreement effective 10/01/2014, with St. Vincent Catholic Charities (hereinafter referred to as "Contractor"), having a mailing address of 2800 West Willow, Lansing, MI 48917, for the provision of certain services as set forth therein; and,

WHEREAS, it is mutually desirable to MDHHS and to the Contractor to amend the aforesaid Agreement.

THEREFORE, in consideration of the promises and mutual covenants hereinabove and hereinafter contained, the parties hereto agree to the following amendment of said Agreement. This amendment shall be attached to the Agreement, said Agreement being hereby reaffirmed and made a part hereof.

Article I

This amendment shall be effective on the date of MDHHS signature.

Article II

MDHHS will exercise the second of two, one-year options to extend. Therefore, the end date of the Agreement shall be changed from 09/30/2017 to 09/30/2018.

Article III

The maximum dollar amount of the Agreement shall be increased by \$1,445,000.00 from \$2,685,000.00 to \$4,130,000.00 for the period 10/01/2014, through September 30, 2018.

Article IV

Agreement Number: PAFC15-33001
Amendment Number: 5

In Section 1., Program Requirements, Item 1.2., Referrals, b., shall be deleted and replaced with:

- b. Upon placement, MDHHS shall provide the Contractor at minimum, with a court order, a Medical Authorization Card (DHS-3762), the Case Referral and Acceptance - Individual Service Agreement (DHS-3600) and all known information about the child and family.

Article V

In Section 2., CONTRACTOR RESPONSIBILITIES, Item 2.9., Compliance Requirements, a. and c., Item 2.10., Services to be Provided, Item 2.11., Key Performance Indicator Outcomes, second paragraph, Item 2.17., Billing and Item 2.23, b., Criminal Background Check shall be deleted and replaced with:

2.9. Compliance Requirements

Except in subsection (h), the Contractor shall comply with the following requirements:

- a. The Contractor shall comply with all applicable MDHHS policy in the Children's Foster Care (FOM), Guardianship (GDM), Service Requirements Manual (SRM), Interstate Compact (ICM), Native American Affairs (NAA) and Adoption (ADM) Manuals and MDHHS policy amendments (including interim policy bulletins).

- c. The Contractor shall comply with the MDHHS non-discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all MDHHS supervised children, and to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

2.10. Services to be Provided

- a. Foster Home Licensing Data Entry

The Contractor shall document all recruitment and licensing activities into the tracking system identified by MDHHS.

Agreement Number: PAF015-33001
Amendment Number: 5

b. Service Standards for Trial Reunification

Trial Reunification is a court-ordered placement where the child is returned from an out-of-home placement to the care of the parent or guardian from whom he or she was removed. The child remains under court supervision during the Trial Reunification period with the MDHHS retaining placement care and custody

- 1) The Contractor shall provide the following services to children in trial reunification:
 - a) Assist in preparing the parent, child, and caregiver for the transition to trial reunification. See FOM 722-7B.
 - b) A Family Team Meeting prior to placement of a child in the parental home to develop a transition plan with the parent, caregiver and child, if age appropriate. The Contractor shall have Family Team Meetings quarterly until case closure. See FOM 722-06B.
 - c) Complete a new Family Assessment of Needs and Strengths, Child Assessment of Needs and Strengths, and Safety Assessment and Safety Plan. See FOM 722-8A, 722-8B and 722-9B.
 - d) Continue case worker visit expectations as required in FOM 722-6H.
 - e) Maintain support services until case closure. The Contractor shall document services needed to continue to meet the child's needs and identified providers for such services to provide continuity of services. See FOM 722-7B.
 - f) Continue assessing and monitoring of the case plan and safety plan.

c. Staff Training

1) Child Welfare Training Institute: Requirements

The Contractor shall ensure that staff transferring to a foster care social service position from another children's services position that has successfully completed the Office of Workforce Development and Training (OWDT) Pre-Service Institute (PSI) training in that program, shall attend and complete OWDT-Foster Care Private Agency Program Specific Transfer Training (PSTT) within six months of assuming the foster care position.

2) OWDT: Registration Process

- a) The Contractor shall register all staff required to attend OWDT training by each individual staff member through the Learning Management System.

Agreement Number: PAF015-33001
Amendment Number: 5

- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To cancel or change training registration, the Contractor will need to directly contact OWDT by telephone or email.
- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by MDHHS at least seven days before the training commences.

3) Foster Home Certification Supervisory Staff: Training Requirements

a) Certification Workers

Staff who conduct any functions related to the certification of foster homes must attend and pass the five-day class on certifying foster homes, investigating and handling complaints against foster homes. Staff are required to attend the class within six months of being assigned to the certification function.

a) Certification Supervisors

Supervisors who have not attended certification training as a certification staff person are to attend the five-day certification and complaint investigation training prior to supervising the certification of foster homes.

b) In-service Training

Certification workers must complete a minimum of 32 in-service training hours per fiscal year. Certification supervisors must complete a minimum of 16 in-service training hours per fiscal year (see Communication Issuance 14-116 for more details).

4) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

5) Completion of Security Awareness Training (SAT)

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who is authorized to have access to client fingerprint-based criminal history record information (CHRI) under this Agreement to successfully

Agreement Number: PAFC15-33001
Amendment Number: 5

complete security awareness training (SAT) within six months of appointment to a position with (CHRI) access and every two years thereafter. Documentation of successful SAT completion is to be located in the personnel record.

Security awareness training is located through the Learning Management System or on the following link:
http://www.michigan.gov/mdhhs/0,5885,7-339-71551_11120_74572---,00.html

- 6) The Contractor shall ensure that each social services staff receives a minimum of 32 hours of qualifying in-service training on an annual basis. The Contractor shall ensure that each social service supervisor receives a minimum of 16 hours of qualifying in-service training on an annual basis. All qualified training shall be training that improves child welfare practice.

d. Relative Licensing

The Contractor may elect to facilitate the licensure of relative caregivers providing care to children in out-of-home placements that are under the direct care and supervision of MDHHS. Facilitation of licensure includes but is not limited to the following activities:

- 1) Accept referrals of unlicensed relative caregivers from MDHHS, for possible licensure as a foster family home, based on the Contractor's capacity to complete the licensing process as outlined in foster care policy.
- 1) On forms provided by MDHHS, and when requested by MDHHS, the Contractor shall report to MDHHS a minimum of monthly on the number and characteristics of unlicensed relative homes and the children in those homes, and on progress in licensing the homes.

e. Adoption and Foster Care Analysis Reporting System Requirements

The Contractor shall enter all child and family information into the Michigan Statewide Automated Child Welfare System (MiSACWIS) to enable MDHHS to comply with Federal Adoption and Foster Care Analysis and Reporting System (AFCARS) reporting requirements. Failure to comply with this reporting requirement shall result in a penalty for the Contractor as specified in Section 3.1 f. of this Agreement.

2.11. Key Performance Indicator Outcomes

Agreement Number: PAFC15-33001
Amendment Number: 5

During the period of this Agreement, the Contractor shall work toward the achievement of the Key Performance Indicators (KPI) listed below. For purposes of the annual contract compliance reviews, compliance with KPIs shall be assessed based on the prior twelve months indicator of the most recent Children's Services Agency – Monthly Management Report in which the Contractors review occurs.

If a Contractor is not meeting the KPIs listed below, the Contractor shall include in its annual assessment and written plan (as required by R 400.12207, Staff Responsibilities) specific activities the Contractor shall complete to demonstrate improvement in the KPI measures. The Contractor shall submit the written plan to the Contractor's Child Welfare Services and Support Analyst by October 1st of each year.

2.17. Billing

The Contractor shall submit through the MiSACWIS system the bi-weekly roster for any child in the Contractors care per the instructions within the MiSACWIS system. The billing shall indicate the units of service provided by the Contractor and shall be submitted to MDHHS within 30 days from the end of the billing period.

No original request for payment submitted by the Contractor more than three years after the close of the two week billing period during which services were provided shall be honored for payment.

When the Contractor's financial records reveal that payment for a child has not been provided by MDHHS within 30 days of receiving all necessary documentation, the Contractor will seek payment resolution by contacting the direct supervisor of the assigned MDHHS worker in writing. Any concerns over a payment authorization or issuance that cannot be resolved within 30 days of the written notice must be reported to the MDHHS County Director for immediate resolution. The Contractor will apprise MDHHS Central Office Administration of any ongoing, unresolved payment concerns.

2.23 Criminal Background Check

b. Children under this Agreement, a Central Registry (CR) check.

Information about CR can be found at
http://www.michigan.gov/mdhhs/0,5885,7-339-73971_7119_50648_48330-180331--,00.html

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who has access to client information, under this Agreement to timely notify the Contractor in

Agreement Number: PAFC15-33001
Amendment Number: 5

writing of criminal convictions (felony or misdemeanor) and/or pending felony charges or placement on the Central Registry as a perpetrator.

Additionally, the Contractor shall require each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with clients under this Agreement or who has access to client information and who has not resided or lived in Michigan for each of the previous ten (10) years to sign a waiver attesting to the fact that they have never been convicted of a felony or identified as a perpetrator, or if they have, the nature and recency of the felony.

The Contractor further certifies that the Contractor shall not submit claims for or assign to duties under this Agreement, any employee, subcontractor, subcontractor employee, or volunteer based on a determination by the Contractor that the results of a positive ICHAT and/or a CR response or reported criminal felony conviction or perpetrator identification make the individual ineligible to provide the services.

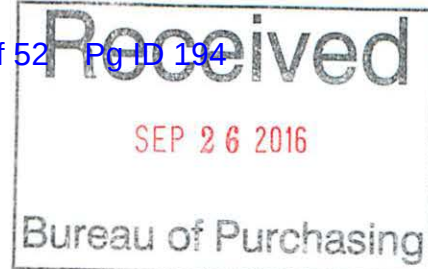
The Contractor must have a written policy describing the criteria on which its determinations shall be made and must document the basis for each determination. The Contractor may consider the recency and type of crime when making a determination. Failure to comply with this provision may be cause for immediate cancellation of this Agreement. In addition, the Contractor must further have a written policy regarding acceptable screening practices of new staff members and volunteers who have direct access to clients and/or client's personal information, which serve to protect the organization and its clients that is clearly defined. The Contractor must also assure that any subcontractors have both of these written policies.

Article VI

In Section 3., MDHHS RESPONSIBILITIES, Item 3.1., Payment, h., 4) shall be deleted and replaced with:

4) MDHHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from DCWL. Refer to the OWDT web site for current reimbursement information for OWDT training at http://www.mich.gov/mdhhs/0,5885,7-339-71551_11120_74572---,00.html

EXHIBIT 4



State of Michigan
 Department of Health and Human Services
 Bureau of Purchasing (BOP)
 PO Box 30037, Lansing, MI 48909
 Or
 235 S. Grand Avenue, Suite 1201, Lansing, MI 48933

AGREEMENT NUMBER: A17-63011
Between
THE STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES
And

CONTRACTOR		PRIMARY CONTACT	EMAIL
Bethany Christian Services		Brian DeVos	bdevos@bethany.org
CONTRACTOR ADDRESS			TELEPHONE
901 Eastern Ave., NE, PO Box 294, Grand Rapids, Mi 49501-0294			616-254-7717
STATE CONTACT	NAME	TELEPHONE	EMAIL
Contract Administrator	Cathe Hoover	517-241-8817	hooverc3@michigan.gov
OCP Analyst	Dawn Akers	517-335-6366	akersd@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Adoption		
GEOGRAPHIC AREA	Statewide		
INITIAL TERM	EFFECTIVE DATE*	EXPIRATION DATE	AVAILABLE OPTION YEARS
3 years	October 1, 2016	September 30, 2019	2, one year options
MISCELLANEOUS INFORMATION			
ESTIMATED AGREEMENT VALUE AT TIME OF EXECUTION		\$1,000,000.00	
AGREEMENT TYPE	Unit Rate		

*The effective date of this Agreement shall be the date listed in the "Effective Date" box above, or the date of Michigan Department of Health and Human Services (MDHHS) signature below, whichever is later.

The undersigned have the lawful authority to bind the Contractor and MDHHS to the terms set forth in this Agreement. Section 291 of the fiscal year 2016 Omnibus Budget, PA 84 of 2015, requires verification that all new employees of the Contractor and all new employees of any approved subcontractor, working under this Agreement, are legally present to work in the United States. The Contractor shall perform this verification using the E-verify system (<http://www.uscis.gov/portal/site/uscis>). The Contractor's signature on this Agreement is the Contractor's certification that verification has and will be performed. The Contractor's signature also certifies that the Contractor is not an Iran linked business as defined in MCL 129.312.

FOR THE CONTRACTOR:

Bethany Christian Services

Contractor

Signature of Director or Authorized Designee

Brian J. De Vos

Print Name

Sept. 20, 2016

Date

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Signature of Director or Authorized Designee

Kim Stephen

Print Name

9-27-16

Date

This Agreement will be in effect from the date of MDHHS signature through September 30, 2019. No service will be provided and no costs to the state will be incurred before October 1, 2016, or the effective date of the Agreement, whichever is later. Throughout this Agreement, the date of MDHHS signature or October 1, 2016, whichever is later, shall be referred to as the begin date.

<u>Agreement Period</u>	<u>Amount</u>
Begin date through September 30, 2019	\$1,000,000.00
Total Amount:	\$1,000,000.00

1. PROGRAM REQUIREMENTS

1.1. Client Eligibility Criteria

- a. The Contractor shall perform activities for Michigan permanent wards that are Title IV-E funded and Michigan Children's Institute (MCI) wards for which adoption is the plan or for children from a participating Inter-State Compact (ICPC) state's child welfare system that has been referred for adoption services to Michigan through ICPC. Any exceptions to this criteria must be approved by the MDHHS Central Office Adoption Program Manager.

- b. Determination of Eligibility

Determination of eligibility will be made by MDHHS.

1.2. Referral Process

- a. Adoption referrals are initiated by MDHHS. Contractors may not transfer adoption cases to another child placing agency. After acceptance of an adoption referral, the Contractor may not transfer the case back to the Department, except upon the written approval of the County Director, the Children's Services Agency Director, or the Deputy Director.

If MDHHS makes a referral to a child placing agency for adoption services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral within seven working days of receipt of the referral from foster care. Any reasons given for declining a referral may be documented in MiSACWIS.

- b. At the time of referral to a private agency, MDHHS shall provide that agency with a referral packet as prescribed in Section 210 of the Adoption Services Manual (ADM 210).
- c. When an eligible child is photo-listed on MARE and the Contractor notifies

the local MDHHS county office that the Contractor has a studied and approved available family, MDHHS shall send a copy of the case file to the Contractor within ten (10) working days of receipt of notification.

2. CONTRACTOR RESPONSIBILITIES

2.1. Email Address

The Contractor authorizes MDHHS to use the contact information below to send Agreement related notifications/information. The Contractor shall provide MDHHS with updated contact information if it changes.

Contact email address: bdevos@bethany.org

2.2 Requests for Information

The Contractor may be required to meet and communicate with MDHHS representatives and from time to time MDHHS may require that the Contractor create reports or fulfill requests for information as necessary to fulfill the MDHHS' obligations under statute and/or Dwayne B. v. Snyder, et al., 2:06-cv-13548, herein referred to as the Implementation, Sustainability, and Exit Plan (ISEP).

The Contractor shall make available to MDHHS copies of any outside reviews, non-redacted FOIA requests, or audits relating to the contracted program.

2.3 Geographic Area

The Contractor shall provide services described herein in the following geographic area: Statewide

2.4 Licensing Requirements

The MDHHS Division of Child Welfare Licensing (DCWL) is the licensing agency for Child Placing Agencies (CPA). A license is issued to a certain person or organization at a specific location, is non-transferable, and remains the property of the Department. Therefore, a child placing agency must be established at a specific location.

The Contractor shall ensure that, for the duration of this agreement, it shall maintain a license for those program areas and services that are provided for in this Agreement. If the Contractor fails to comply with this section, MDHHS may terminate this Agreement for default.

The Contractor is licensed to provide service under this agreement under the following license number: CB630200978

2.5. Location of Facilities

The Contractor shall provide services described herein at the following location(s):

30685 Barrington St., Ste.140, Madison Heights, MI 48071

2.6 Program Focus and Statement

The Contractor shall perform activities for Michigan permanent wards that are Title IV-E funded and Michigan Children's Institute (MCI) wards for which adoption is the plan or for children from a participating Inter-State Compact (ICPC) state's child welfare system that has been referred for adoption services to Michigan through ICPC.

Reimburse licensed child placing agencies through a current MDHHS adoption contract at specific rates for the legal placement and finalization of an adoption for an eligible child. Per diem payments for cases referred to the contractor by MDHHS for adoption services can be charged a maximum of \$3000.00 per child. The total amount paid for the per diem rate is deducted from the applicable placement rate when the child is placed by the court in an adoptive home. Reimbursement for contract agency staff's successful completion of applicable training provided by the Office of Workforce Development and Training is included.

The Contractor shall provide MDHHS with copies of their Adoption Program Statement. The program statement shall comply with the requirements of MDHHS Division of Child Welfare Licensing standards and MDHHS policy. The Contractor shall inform MDHHS of any changes made to the program statement at any point during the term of this Agreement and provide copies of the new statement to MDHHS within 60 days.

2.7 Reserved

2.8. Credentials

The Contractor shall assure that appropriately credentialed or trained staff under its control, including Contractor employees and/or subcontractors, shall perform functions under this Agreement.

2.9 Compliance Requirements

Except as stated in e. below, the Contractor shall comply with the following requirements:

- a. The Contractor shall comply with all applicable MDHHS policy and MDHHS policy amendments including fingerprint-based criminal history policy. MDHHS policies and MDHHS policy amendments/bulletins are published on the following internet link: <http://www.michigan.gov/mdhhs-manuals>.
- b. Throughout the terms of this Agreement, the Contractor shall ensure that it provides all applicable MDHHS policy and MDHHS policy amendments to social service staff. The Contractor shall ensure that social service staff complies with all applicable requirements.
- c. The Contractor shall comply with the MDHHS non-discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs or disability.

The above statement applies to all applications filed for adoption of MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

- d. The Contractor accepts a referral from MDHHS under this Agreement by doing either of the following:
 - 1) Submitting to MDHHS a written agreement to perform the services related to the particular child or particular individuals that the Department referred to the Contractor, or
 - 2) Engaging in any other activity that results in MDHHS being obligated to pay the Contractor for the services related to the particular child or particular individuals that the Department referred to the Contractor.
- e. Under 1973 PA 116, as amended by 2015 PA 53, the Contractor has the sole discretion to decide whether to accept or not accept a referral from MDHHS. Nothing in this Agreement limits or expands the application of the Public Act.

Adoption referrals are initiated by MDHHS. Contractors may not transfer adoption cases to another child placing agency. After acceptance of an adoption referral, the Contractor may not transfer the case back to the Department, except upon the written approval of the County Director, the Children's Services Agency Director, or the Deputy Director.

If MDHHS makes a referral to a child placing agency for adoption services pursuant to a contract with the child placing agency, the child

placing agency must accept or decline the referral within seven working days of receipt of the referral from foster care. Any reasons given for declining a referral may be documented in MiSACWIS.

- f. The contractor shall ensure all directives and services ordered by the court are completed to the satisfaction of the court within the timeframes ordered.
- g. The Contractor shall participate in random moment time studies (RMTS). An RMTS is a process where participants are emailed short surveys and asked to indicate what they were doing at an assigned time. The time study is required to determine the amount of time spent on various activities. Based on these results, MDHHS determines the amount that can be charged to various funding sources.
- h. Compliance with MDHHS Implementation, Sustainability, and Exit Plan

The Contractor shall ensure compliance with all applicable provisions and requirements of Dwayne B. v. Snyder, et al., 2:06-cv-13548, Implementation Sustainability and Exit Plan.

- i. Additional Compliance Provisions
 - 1) 1984 Public Act, 114, as amended, being M.C.L. 3.711 *et seq.*, Interstate Compact on the Placement of Children.
 - 2) 1939 Public Act 288, Chapter X, being M.C.L. 710.1 *et seq.*, Michigan Adoption Code.
 - 3) 1984 Public Act 203, as amended, being M.C.L. 722.951 *et seq.*, Michigan Foster Care and Adoption Services Act.
 - 4) The Social Security Act as amended by the Multiethnic Placement Act of 1994 (MEPA); Public Law 103-382, and as amended by Section 1808 of the Small Business Job Protection, the Interethnic Adoption Provision (IEAP).
 - 5) The Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.*
 - 6) P.L. 110-351, known as the Fostering Connections to Success and Increasing Adoptions Act of 2008.
 - 7) Social Security Act, 42 USC 671(a)(20)
 - 8) Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Security Policy located on the following link: <https://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>

2.10 Services to be Provided

a. General Adoption Responsibilities

- 1) Place the child for adoption under the provisions of this Agreement or

assist in the child's placement by another private agency or MDHHS local office.

- 2) The Contractor that has the identified adoptive family shall be the agency to perform adoptive activities including: placement, case management, supervision and court related requirements.
- 3) When the Contractor has an identified adoptive family for a child under supervision of another agency the Contractor shall work cooperatively with the child's agency in coordinating and sharing responsibility for pre- placement activities and associated costs for transportation and other case services.
- 4) When a placement for adoption disrupts or a finalized adoption dissolves within eighteen (18) months of the date of the order for placement or finalization the Contractor shall be, unless ordered or directed otherwise by the Court or MDHHS, responsible to provide full adoption services for the child/youth as detailed in this contract. The responsible contractor is defined as the Contractor that had adoption planning responsibilities for the child when the initial adoption placement occurred. The exception shall be in a contested case where a child is placed in an adoptive home against the recommendation of the contractor.
- 5) Provide guidance to the child's foster parent in preparation of the child for adoption or in facilitating a transfer of the child's attachment to the adoptive parents.
- 6) In instances where the child's agency has performed pre-placement activities for the adoptive family's agency, the adoptive family's agency shall provide the child's agency with a copy of the court order placing the child in the adoptive home within thirty (30) working days, after receipt of said order.
- 7) The Contractor shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children. This shall include photo listing on the MARE website, networking with other private agencies in determining availability of resource families and other recruitment activities that are statewide and national in nature. The Contractor shall respond to and actively work with, prospective adoptive parents outside of the State of Michigan.
- 8) The Contractor shall maintain documentation of completion of the above listed requirements in the child's adoption case file for review by MDHHS.

b. Adoption, Recruitment, Orientation and Training

- 1) The Contractor shall develop and implement a plan for adoptive home recruitment, retention, and support consistent with the MDHHS DCWL Licensing Standards specific to the Contractor's license specified in Section 2.4.
- 2) The Contractor shall provide adoption recruitment activities in collaboration with other private agencies and MDHHS local offices to focus on children registered on Michigan Adoption Resource Exchange (MARE).
- 3) The Contractor shall work cooperatively with other contracted adoption agencies, MDHHS and trained adoptive parents to provide orientation and training. It is recommended that adoptive parent peer mentors be matched to prospective and new adoptive parents. The Contractor shall retain in the case record verification of training provided to the adoptive family including but not limited to:
 - a.Type of training provided
 - b.Date training provided
 - c.Subject material covered during training
- 4) The Contractor shall involve youth in the planning and organizing of adoption recruitment events.
- 5) The Contractor shall develop supports for children and youth moving to permanency through adoption. Best practice research indicates that support groups, peer mentors, informational sessions and individual counseling are effective tools. Developing appropriate rituals and recognition for the transitions experienced shall be part of the adoption process.
- 6) The Contractor shall be responsible for providing information to the prospective adoptive parent(s) regarding the adoption assistance programs on behalf of all children available for adoption. If the Contractor fails to provide information, fails to apply for adoption assistance or finalizes an adoption prior to the execution of an adoption assistance agreement, and it is later determined that the child was eligible for adoption assistance, the Contractor shall be responsible for providing financial support to the family equal to the adoption assistance amount and eligible Medicaid coverage, from the time the family makes the request for the re-determination of eligibility and the date MDHHS determines that an error occurred based on the Contractor's failure to inform or apply for adoption assistance.

c. MARE Related Responsibilities

The Contractor shall cooperate with MARE related activities and responsibilities, as detailed in this document including but not limited to:

- 1) The Contractor shall appropriately inform and prepare children concerning the process of photo listing. Children shall be adequately attired and well groomed. Adequately attired is defined as that which a parent would provide for their child in a school photo. The Contractor is responsible for securing photography services and may request coupons or assistance from the MARE office. The Contractor is responsible for facilitating transportation to key photo sites and supervision of the child (ren) during the process.
- 2) The Contractor shall, as appropriate to the child's ability, involve youth over age nine (9) in developing individual recruitment materials and narratives for MARE photo listing.
- 3) The Contractor must submit a copy of the Order Placing Child after Consent and the Order of Adoption to the MARE office within ten (10) working days of issuance by the court.
- 4) Upon determination by the Contractor that the MARE potential family 'match' is appropriate, the child and family agencies shall begin the process towards adoption within ten (10) working days.
- 5) The Contractor shall provide a written brochure (developed by MARE) to adoptive families regarding their right to be included in the MARE prospective family registry and provide an explanation of this process during orientation. This brochure and information shall again be provided to the prospective family during the formal training process.
- 6) The Contractor shall ensure all age appropriate youth available for adoption have knowledge of and access to the MARE newsletter for youth.
- 7) The Contractor shall notify MARE no less than quarterly of planned adoption related events, scheduled or tentatively scheduled for the next quarter. These activities shall include but are not limited to orientation, training dates, workshops, adoption fairs, recruitment activities, post adoption support activities and guest speakers. The Contractor will indicate if the events are open to the public or limited to a specific audience and any costs for family participation.
- 8) If the local court is participating, the Contractor shall cooperate with MARE during planning and implementation of National Adoption Day activities and regionally based adoption events.

- 9) The Contractor shall ensure MARE staff has access to case records, the child, child's worker, and other material or persons necessary for the development and updating of the child's MARE file and recruitment material.
- 10) The Contractor shall submit the completed Disruption/Dissolution survey to MARE within thirty (30) days of receipt of the survey from MARE.
- 11) The Contractor shall provide to MARE by October 30th of each year the following:
 - a. The address of all offices.
 - b. Names, telephone numbers and email addresses of all adoption workers and supervisors.
 - c. Types of services provided by the Contractor.
- 12) The Contractor shall ensure that a supervisor attends the regionally based MARE sessions on changes to MARE processes and services. This individual shall then be responsible to disseminate MARE information and material to appropriate agency staff.

d. Caseload Tracking and Reporting

The Contractor shall report to MDHHS caseload ratios for social services supervisors, social service staff and licensing staff in a format and within timeframes as determined by MDHHS.

e. Staff Training

1) Pre-Service Institute: Requirements

The Contractor shall ensure that staff transferring to an adoption social service position from another children's services position that has successfully completed the Office of Workforce Development and Training (OWDT) Pre-Service Institute (PSI) training in that program, shall attend and complete Adoption Program Specific Transfer Training (PSTT) within six months of assuming the adoption position.

2) OWDT Registration Process

- a) The Contractor shall register all staff required to attend training by each individual staff member through the Learning Management System.
- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To

cancel or change training registration, the Contractor will need to directly contact OWDT by telephone or email.

- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by MDHHS at least seven days before the training commences.

3) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

4) Completion of Security Awareness Training (SAT)

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who is authorized to have access to client fingerprint-based criminal history record information (CHRI) under this Agreement to successfully complete security awareness training (SAT) within six months of appointment to a position with (CHRI) access and every two years thereafter. Documentation of successful SAT completion is to be located in the personnel record.

Security awareness training is located through the Learning Management System or on the following link:
http://www.michigan.gov/mdhhs/0,5885,7-339-71551_11120_74572---.00.html

2.11 Expected Performance Outcomes

During the Agreement, the Contractor shall demonstrate measurable progress toward the achievement of the outcomes listed below:

- a. Fewer than 5% of placements for adoption will end in disruption.
- b. Fewer than 5% of finalized adoptions will end in dissolution.
- c. By September 30, 2017, not less than 80% of the number of children with a goal of adoption that are legally free for adoption on September 30, 2016 shall have adoptions finalized.
- d. By September 30, 2017, not less than 80% of the number of children with a goal of adoption that are legally free for adoption on September 30, 2016 will have the adoption petition filed with the court.

2.12 Audit Requirements

Contractor/Vendor Relationship

This Agreement constitutes a contractor/vendor relationship with MDHHS..

The Contractor must immediately report to the MDHHS Bureau of Audit, Reimbursement and Quality Assurance accounting irregularities including noncompliance with provisions of this Agreement.

2.13. Financial Audit Requirements

a. Required Audit or Notification Letter

Contractors must submit to the Department either a Single Audit, Financial Statement Audit, or Audit Status Notification Letter as described below. If submitting a Single Audit or Financial Statement Audit, Contractors must also submit a Corrective Action Plan for any audit findings that impact MDHHS-funded programs, and management letter (if issued) with a response.

1) Single Audit

Contractors that are a non-profit organization and that expend \$750,000 or more in federal awards during the Contractor's fiscal year, must submit a Single Audit to the Department, regardless of the amount of funding received from the Department. The Single Audit must comply with the requirements of Title 2 Code of Federal Regulations, Subpart F.

2) Financial Statement Audit

Contractors exempt from the Single Audit requirements with fiscal years that receive \$500,000 or more in **total funding** from the Department in State and Federal grant funding must submit to the Department a Financial Statement Audit prepared in accordance with generally accepted auditing standards (GAAS).

3) Audit Status Notification Letter

Contractors exempt from the Single Audit and Financial Statement Audit requirements (1 and 2 above) must submit an Audit Status Notification Letter that certifies these exemptions. The template Audit Status Notification Letter and further instructions are available at <http://www.michigan.gov/mdhhs> by selecting Inside MDHHS menu, then MDHHS Audit, then Audit Reporting.

b. Due Date and Where to Send

The required audit and any other required submissions (i.e. Corrective Action Plan and management letter with a response), or Audit Status Notification Letter must be submitted to the Department within nine months after the end of the Contractor's fiscal year by e-mail to the Department at MDHHS-

AuditReports@michigan.gov. The required submissions must be in PDF files and compatible with Adobe Acrobat (read only). The subject line must state the agency name and fiscal year end. The Department reserves the right to request a hard copy of the audit materials if for any reason the electronic submission process is not successful.

c. Penalty

Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

d. Other Audits

The Department or federal agencies may also conduct or arrange for "agreed upon procedures" or additional audits to meet their needs.

2.14. Cost Reporting

The Contractor shall submit annual financial cost reports based on the state's fiscal year which begins October 1 and ends September 30 in the following calendar year. The reports shall contain the actual costs incurred by providers in delivering services required in this agreement to MDHHS clients for the reporting period. Costs for non-MDHHS children are not to be included. Reports will be submitted using a template provided by MDHHS. The financial reports shall be submitted annually, and will be due November 30 of each fiscal year. The Contractor must comply with all other program and fiscal reporting procedures as are or may hereinafter be established by MDHHS. Reports shall be submitted electronically to MDHHS-Foster-Care-Audits@michigan.gov with the subject line: Adoption Actual Cost Report. Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

2.15. Service Documentation

The Contractor agrees to maintain program records required by MDHHS, program statistical records required by MDHHS, and to produce program narrative and statistical data at times prescribed by, and on forms furnished by, MDHHS.

2.16. Private Agency MiSACWIS

The Contractor shall ensure that private agency staff has access to the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) through a web-based interface, henceforth referred to as the "MiSACWIS application." The contractor shall ensure that staff follow the MiSACWIS requirements for CPA contracts which are found at http://www.michigan.gov/documents/dhs/Private_Agency_MiSACWIS_for_CPA_Contracts_464663_7.pdf

For all agency assigned cases in MiSACWIS, the Contractor shall enter all case management activities, including payments and all required documentation per policy in MiSACWIS.

2.17. Billing

The Contractor shall maintain a record system that documents the total number of units of service as defined in this Agreement and delivered during the term of this Agreement. These records shall also document the specific units billed to MDHHS under this Agreement.

The Contractor shall submit a DHS-1582A to:

Michigan Department of Health and Human Services
Office of Child Welfare Policy and Programs
Suite 514 PO Box 30037
Lansing, MI 48909

The DHS-1582A shall indicate the title of the service provided and the pre adoptive and adoptive name, case number and date of birth of the child served. The DHS-1582A and any subsequent corrections must be completed and received in the Office of Child Welfare Policy and Programs within 120 days of the date of the placement or finalization, whichever is applicable, as those terms are defined in Section I(M)(2-3) of this Agreement.

- a. Billing for all designated services including: per diem, placement, finalization, permanency, and disruptions require a copy of the Order Terminating Parental Rights (Permanent Court Ward/Commitment), the signed DHS3600 for cases referred on or after May 2016, or earlier if applicable, and with the exception of per diems, the signed and dated documentation by the court (DHS 5308 or petition date stamped from the court) verifying the date that the court has accepted the adoption petition and support documentation .
- b. The MARE rates require a copy of the MARE photo listing and the subsequent MARE "Hold" document.
- c. The Residential rate requires a copy of the discharge summary from the residential facility and a copy of the placement record including placement with the prospective adoptive parent prior to filling the petition.
- d. Billing for finalizations requires a copy of the Order of Adoption.
- e. Billing for delayed referrals must include a copy of the Contractors acceptance form with the referral date and statement by MDHHS that includes the child's commitment date. The referral form must be signed

by a MDHHS representative and must have "Delayed Referral" designated on the payment voucher.

- f. Billing for placement requires a copy of the referral/acceptance form (signed DHS 3600 for cases referred on or after May 2016, or earlier if applicable), Order Terminating Parental Rights and the Order Placing Child.
- g. Disruptions require an Ex Parte Order, or order dismissing, a copy of the initial placement order, initial commitment order, documentation verifying the medical condition of the family member if appropriate, a copy of the placement check and agency disruption report.
- h. Legal Risk–Order Placing Child Filed: In cases where a birth parent, individually or through an attorney, has filed a petition to appeal the termination of parental rights, the Contractor shall submit a DHS-1582A requesting payment (placement and finalization). The Contractor must also submit a photocopy of the Claim, filed in conformity with MCR 7.203.
- i. When billing for the per diem, each payment voucher shall be child specific. Attached to the initial payment voucher the following documents must be included: the DHS-3600 (for Adoption Services) with the date of acceptance indicated, the signed agreement of intent to adopt by a relative or identified family (for matched cases only) and verification from MARE that a complete photo listing or a complete "hold" registration was submitted on the case. The Contractor shall identify in Box 13 of the payment voucher the number of days covered, date range, and the number of per diem billings submitted on behalf of the child.
- j. When requesting an exception to the payment rate, it is the responsibility of the Contractor to demonstrate that requests for adoption assistance eligibility determination or MCI consent delayed the adoption placement. If the delay was caused by submission of incomplete paperwork or a lack of response to requests for information, the consideration for exception will be denied. There is a thirty (30) day standard of promptness for adoption assistance eligibility determinations and MCI regular and expedited consent requests and a ninety (90) day standard of promptness for MCI consent requests on competing parties. If information is missing, incomplete, or unclear and needing follow-up, the standard of promptness timeframe will not begin until all needed information is available for review, including legal documents and information needed to fulfill policy requirements. The Adoption Payment Exception Request, DHS 832 form must be submitted with the completed DHS-1582A.
- k. The ICPC rate(s) require copies of the ICPC referral, DHS-3600 (for Adoption Services), adoptive family home study, adoption supervision

reports (if applicable), Order Terminating Parental Rights (Permanent Court Ward/Commitment), Adoption Petition documentation and Order of Adoption, if applicable.

- I. Billings for competing parties, in which the case would be eligible for a rate less than the Baseline rate and the Contractor is requesting the Baseline rate, requires the Contractor to submit a Competing Party Rate Exception Request (DHHS-5445) and copies of the case acceptance documentation, dates of the initial inquiry, adoption application and DHS-4809 from each competing party and copies of the assessment for each competing party.

2.18. Fees and Other Sources of Funding

The Contractor guarantees that any claims made to MDHHS under this Agreement shall not be financed by any source other than MDHHS under the terms of this Agreement. If funding is received through any other source, the Contractor agrees to deduct from the amount billed to MDHHS the greater of either the fee amounts, or the actual costs of the services provided.

The Contractor may not accept reimbursement from a client unless the Agreement specifically authorizes such reimbursement in the "Contractor Responsibility" Section. In such case, a detailed fee scale and criteria for charging the fee must be included. If the Contractor accepts reimbursement from a client in accordance with the terms of the Agreement, the Contractor shall deduct these fees from billings to MDHHS.

Other third party funding sources, e.g., insurance companies, may be billed for contracted client services. Third party reimbursement shall be considered payment in full unless the third party fund source requires a co-pay, in which case MDHHS may be billed for the amount of the co-pay. No supplemental billing is allowed.

2.19. Recoupment of Funding and Repayment of Debts

a. Recoupment of Funding

If the Contractor fails to comply with requirements as set forth in this Agreement, or fails to submit a revised [DHS-3469] payment request within allotted time frames established by MDHHS in consultation with the Contractor, MDHHS may, at its discretion, recoup or require the Contractor to reimburse payments made under this Agreement which MDHHS has determined that the Contractor has been overpaid. The Contractor is liable for any cost incurred by MDHHS in the recoupment of any funding.

Upon notification by MDHHS that repayment is required, the Contractor shall make payment directly to MDHHS within 30 days or MDHHS may withhold

current or future payments made under this or any other agreements, current or future, between MDHHS and the Contractor.

If the Contractor fails to: (1) correct noncompliance activities identified by MDHHS, (2) submit revised billings as requested as part of a corrective action plan when required; or (3) remit overpayments or make arrangements to have the overpayments deducted from future payments within 30 days, such failure shall constitute grounds to terminate immediately any or all of MDHHS' agreements with the Contractor. MDHHS shall also report noncompliance of the Contractor to Michigan's Department of Technology, Management and Budget. Such report may result in the Contractor's debarment from further contracts with the state of Michigan.

b. Repayment of Debts and Other Amounts due MDHHS

By entering into this Agreement, the Contractor agrees to honor all prior repayment agreements established by MDHHS with the Contractor or Contractor's predecessors. If the Contractor has an outstanding debt due to MDHHS but does not have a repayment agreement, the Contractor agrees to make monthly payments to MDHHS at an amount not less than 5% of any outstanding balance and to begin on the date this Agreement is executed.

If the Contractor fails to honor prior repayment agreements, or the Contractor fails to begin repayment on an obligation due MDHHS that is not subject to a repayment agreement, MDHHS will initiate the administrative process to reduce payments to the Contractor under this Agreement to recoup the debt. The payment reduction will be made at the amount originally established in the repayment agreement or at an amount not less than 5% of any outstanding balance effective on the date this Agreement is executed.

2.20. Child Protection Law Reporting Requirements

- a. The Contractor shall ensure that all employees who have reasonable cause to suspect child abuse or neglect shall report any suspected abuse or neglect of a child in care to MDHHS for investigation as required by Public Acts of 1975, Act Number 238.
- b. Failure of the Contractor or its employees to report suspected abuse or neglect of a child to MDHHS shall result in an immediate investigation to determine the appropriate corrective action up to and including termination of the contract.
- c. Failure of the Contractor or its employees to report suspected child abuse or neglect two or more times within a one-year period shall result in a review of the contract agency's violations by a designated

Administrative Review Team, which shall include the Director of CSA and the Director of DCWL or its successor agency, that shall consider mitigating and aggravating circumstances to determine the appropriate corrective action up to and included license revocation and contract termination.

2.21 The Division of Child Welfare Licensing (DCWL)

DCWL shall be responsible for review of the Contractor's compliance with the Agreement and any court orders, via an Annual Compliance Review (ACR) and Special Investigations. DCWL may review, analyze and comment on all activities covered within the terms of the Agreement or court order. If the ACR or Special Investigation reveals that the Contractor has not complied with the requirements of this Agreement or court order, the following procedures shall be implemented:

- a. DCWL shall notify the Contractor of the Agreement or court noncompliance. This notification shall occur verbally during an exit conference, and be followed with a written report of the findings. The Contractor may request a meeting to discuss and examine the identified Agreement or court noncompliance.
- b. Following the identification of the Agreement or court noncompliance, DCWL will request the Contractor submit a Corrective Action Plans (CAP) to DCWL within 15 days of receiving the written report of findings.
- c. After the Contractor's CAP has been reviewed and approved by DCWL, the Contractor's compliance with the CAP shall be reviewed in accordance with time frames established by DCWL in the written notification of acceptance of the CAP.
- d. Based on the severity or repeated nature of cited violations, a recommendation may be made by DCWL at any time to place a moratorium on new placements with the contractor or to cancel the contract. If either recommendation is made, a meeting will be convened with the director of the contracted agency, the division director of DCWL and the CSA director or designee to provide the contractor with the opportunity to provide documented information on why the moratorium or cancellation of the contract should not occur.
- e. If a moratorium on new placements is put into place, it shall be for a minimum of 90 days to allow the contractor to remedy cited violations and comply with any agreed on CAP. If the cited violations are not corrected during the period of the moratorium or additional serious violations are cited, consideration shall be given to cancellation of the agency's contract.

Final decisions regarding the cancellation of a contract shall be made by the CSA director.

2.22 Corrective Action Requirements

If a program review by MDHHS reveals a lack of compliance with the requirements of this Agreement, the Contractor shall:

- a. Meet with MDHHS to discuss the noncompliance.
- b. Prepare a corrective action plan within 30 days of receiving MDHHS' written findings.
- c. Achieve compliance within 60 days of receipt of MDHHS' approval of the corrective action plan (unless other time frames are agreed to in writing by MDHHS) or MDHHS may terminate this Agreement, subject to the standard contract terms.

2.23. Criminal Background Check

As a condition of this Agreement, the Contractor certifies that the Contractor shall, prior to any individual performing work under this Agreement, conduct or cause to be conducted for each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with:

- a. Clients under this Agreement, or who has access to client information, an Internet Criminal History Access Tool (ICHAT) check and a National and State Sex Offender Registry check.

Information about ICHAT can be found at <http://apps.michigan.gov/ichat>.

The Michigan Public Sex Offender Registry web address is <http://www.mipsor.state.mi.us>.

The National Sex Offender Public Website address is <http://www.nsopw.gov>.

- b. Children under this Agreement, a Central Registry (CR) check.

Information about CR can be found at http://www.mi.gov/MDHHS/0,1607,7-124-5452_7119_48330-180331-.00.html.

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who has access to client information, under this Agreement to timely notify

the Contractor in writing of criminal convictions (felony or misdemeanor) and/or pending felony charges or placement on the Central Registry as a perpetrator.

Additionally, the Contractor shall require each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with clients under this Agreement or who has access to client information and who has not resided or lived in Michigan for each of the previous ten (10) years to sign a waiver attesting to the fact that they have never been convicted of a felony or identified as a perpetrator, or if they have, the nature and recency of the felony.

The Contractor further certifies that the Contractor shall not submit claims for or assign to duties under this Agreement, any employee, subcontractor, subcontractor employee, or volunteer based on a determination by the Contractor that the results of a positive ICHAT and/or a CR response or reported criminal felony conviction or perpetrator identification make the individual ineligible to provide the services.

The Contractor must have a written policy describing the criteria on which its determinations shall be made and must document the basis for each determination. The Contractor may consider the recency and type of crime when making a determination. Failure to comply with this provision may be cause for immediate cancellation of this Agreement. In addition, the Contractor must further have a written policy regarding acceptable screening practices of new staff members and volunteers who have direct access to clients and/or client's personal information, which serve to protect the organization and its clients that is clearly defined. The Contractor must also assure that any subcontractors have both of these written policies.

If MDHHS determines that an individual provided services under this Agreement for any period prior to completion of the required checks as described above, MDHHS may require repayment of that individual's salary, fringe benefits, and all related costs of employment for the period that the required checks had not been completed.

3. MDHHS RESPONSIBILITIES

3.1. Payment

MDHHS shall make payments to the Contractor pursuant to MCL 17.51-17.57 and State of Michigan Financial Management Guide, Part II-Accounting and

Financial Reporting, Chapter 25, Section 100, "Prompt Payment for Goods and Services."

a. MDHHS shall make the following payments to the Contractor:

Rate Category	Placement	Finalization	Permanency
Early Adoption Level 2	\$6,900	\$3,450	\$1,150
Early Adoption Level 1	\$6,000	\$3,000	\$1,000
Baseline	\$5,400	\$2,700	\$900
Late Adoption Level 1	\$4,800	\$2,400	\$800
Late Adoption Level 2	\$4,200	\$2,100	\$700
Late Adoption Level 3	\$3,000	\$1,500	\$500
MARE	\$12,240	\$6,120	\$2,040
Residential	\$7,980	\$3,990	\$1,330
In-State Transfer Services	\$3,000		
Inter-State Existing Services	\$3,000		
Inter-State New Services	\$3,500		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoptive Home Study Denial	\$2000		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoptive Home Study Approval	\$2000		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoption Supervision with applicable reports	\$500 at Placement \$500 at Finalization		

b. Per Diem Payments

For each child where the adoption case is referred to the Contractor by MDHHS, the Contractor shall receive payment of \$20.00 per diem for each day of adoptive services from acceptance of the case (DHS 3600 for cases referred on or after October 2016, or earlier if applicable) to the date of the signed documentation from the court (DHS 5308 or petition date stamped by the court) verifying that the court has accepted the petition and support documentation, or for one hundred fifty (150) days, whichever comes first. The maximum per diem payment amount per child is \$3,000.

For adoption cases referred on or after October 2016, the Contractor may bill for the full per diem amount of \$3,000 and must include verification from MARE that either a complete photo listing or a complete hold registration was submitted to MARE on the case. In the event that the Contractor receives the full per diem amount on a case which is not assigned to the Contractor for 150 days, the Contractor will be responsible for repayment of the per diem at a rate of \$20.00 for each day in which they received a per diem payment and were no longer assigned to the case.

Payment of the initial placement rate: the total of all per diem payments for each child shall be deducted from the applicable placement rate to be paid.

c. Adoption Training Payments

The Contractor must submit the following with the completed DHS-1582A to the Office of Child Welfare Policy and Programs in central office:

- 1) A copy of the transcript reflecting the completion of the CWTI pre-service training for each adoption worker.
- 2) A statement confirming that 50% of the adoption worker's caseload will be children in the MDHHS foster care system.

d. Placement Disruption

Payment after Placement for adoptions ending in disruption will only be made in the following cases:

- 1) Disruption Due to Medical Condition of Prospective Family Member: If the adoptive family experiences a documented chronic medical condition requiring long term care or a condition anticipated to result in the death of a family member after the adoptive placement of a child, the Contractor shall be eligible for a per-diem rate. The payment shall be a portion of the appropriate rate for finalization, which shall be established by dividing the duration (number of days) of the adoptive placement until disruption by 182 days. The disruption rate shall not exceed the rate that would have otherwise been paid had finalization occurred.
- 2) Death of an Adoptive Child: In cases where a child dies between order placing in the adoptive home and the final order of adoption, the Contractor shall be eligible for a per-diem from the date of placement to the date of death (unless cause of death is determined to be neglect or abuse) not to exceed the rate that would have otherwise been paid had finalization occurred.
- 3) Disruption after Order Placing Child in the adoptive home: When the

disruption order is issued more than 182 days from the date of the order placing the child in the adoptive home, the Contractor shall be paid the full finalization rate.

- 4) Disruption of Placement Determined by MCI Superintendent: In a case where the child is placed in a home based on the decision of the MCI Superintendent, against the recommendation of the Contractor, the Contractor shall be eligible for a per-diem rate. The payment shall be a portion of the appropriate rate for finalization, which shall be established by dividing the duration (number of days) of the adoptive placement until disruption by 182 days. The disruption rate shall not exceed the rate that would have otherwise been paid had finalization occurred. Payment for subsequent placements will not reflect a disruption.

e. Adoption Dissolution

MDHHS shall recover, from the Contractor, the Permanency Unit Rate for adoptions that end in dissolution within 182 days of issuance of an Order of Adoption.

f. Payment – Re-Placement of Child after Disruption by Same Contractor

Re-placement of child photo listed on MARE or from a Residential facility:

Subsequent adoptive placement and finalization by the same Contractor (that placed the child in the disrupted/dissolved home) for a child previously reimbursed at one of the MARE rates or the Residential rate, shall not exceed the Baseline rate for a second adoptive placement/finalization. The maximum rate for any re-placement of a child photo listed on MARE or from a Residential facility beyond the second placement shall not exceed the Late Adoption Penalty Level 3 rate if paid to the same Contractor.

Re-placement by the same Contractor of a child under any rate other than a MARE or Residential rate shall not exceed the Baseline rate.

Exceptions may be made to the re-placement rate. The Contractor must submit documentation of efforts that were required to prepare a child for subsequent placement and the recruitment of an adoptive family. Submit request for exceptions to the Adoption Analyst in MDHHS Central Office and stipulate the rate requested.

g. Unit Definitions

1) Unit Title: Per Diem Payments

For each child where the adoption case is referred to the Contractor by MDHHS , the Contractor shall receive payment of \$20.00 per diem for

each day of adoptive services from acceptance of the case (signed DHS 3600 for cases referred on or after October 2016, or earlier if applicable) to date of the signed documentation from the court (DHS 5308 or petition date stamped from the court) verifying that the court has accepted the adoption petition and support documentation, or for one hundred fifty (150) days, whichever comes first. The maximum per diem payment amount per child is \$3,000.

The total amount paid for the per diem rate will be deducted from the applicable placement rate when the child is placed for adoption.

The Contractor must submit the Individual Service Agreement (DHS-3600) (for Adoption Services) with the date of acceptance indicated and the completed Adoption Payment Voucher (DHS-1582A).

For adoption cases referred on or after October 2016, the Contractor may bill for the full per diem amount of \$3,000 and must include verification from MARE that either a complete photo listing or a complete hold registration was submitted to MARE on the case. In the event that the Contractor receives the full per diem amount on a case which is not assigned to the Contractor for 150 days, the Contractor will be responsible for repayment of the per diem at a rate of \$20.00 for each day in which they received a per diem payment and were no longer assigned to the case.

2) Unit Title: Placement

All unit definitions below are based on the length of time from the receipt of the written order from the court terminating all parental rights or, the date on which the DHS-3600 is fully executed, whichever is later, to the date of the signed documentation from the court (DHS 5308 or petition or petition date stamped from the court) verifying that the court has accepted the adoption petition and support documentation.

If the child's goal changes from adoption to another goal and then changes back to the goal of adoption, the Contractor must obtain a new DHS-3600 for adoption services for the updated goal of adoption.

The Contractor must submit the Order Terminating Parental Rights, signed and dated documentation from the court (DHS 5308 or petition date stamped from the court) verifying the date that the court has accepted the adoption petition and support documentation, the Adoption Petition documentation and the Acceptance of Case Transfer documents (DHS3600) if applicable. The document indicating the date of acceptance must be signed by a MDHHS representative as verification. If there was a per diem payment for the case prior to

placement the Contractor must note "per diem billed" in box 13 of the DHS-1582A.

3) Unit Title: Finalization

Unit Definition: One unit equals receipt of an Order of Adoption for a child for whom a Placement rate was paid.

4) Unit Title: Permanency

Unit Definition: One unit equals an adoption that does not end in dissolution within 182 days of the issuance of an Order of Adoption. The Permanency Unit Rate shall be paid at the same time as the Finalization Unit Rate. The Contractor will be responsible for repayment of the Permanency Unit Rate for those cases for which the adoption ended in dissolution.

5) Unit Title: Baseline

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child is signed and dated by the court more than two hundred ten (210) days, but two hundred forty (240) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

6) Unit Title: Early Adoption - Level 1

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child is signed by the court more than one hundred fifty (150) but two hundred ten (210) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

7) Unit Title: Early Adoption - Level 2

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child is signed and dated by the court one hundred fifty (150) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

8) Unit Title: Late Adoption - Level 1

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child is signed and dated by the court more than two hundred forty (240) days, but three hundred (300) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

9) Unit Title: Late Adoption - Level 2

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child is signed and dated by the court more than three hundred (300) days, but three hundred sixty (365) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

10) Unit Title: Late Adoption - Level 3

Unit Definition: The Adoption Petition documentation or Order Placing Child is signed and dated by the court more than three hundred sixty (365) days after the date of placement as defined in Subsection 3.1. g. ii above.

11) Unit Title: MARE

Unit Definition: The Order Placing Child is signed and dated by the court for a child who has been registered for photo listing on MARE.

The Contractor is not eligible for the MARE rate if the Contractor photo lists the child. The exception to allow for payment of the MARE rate to the supervising agency requires the Contractor to submit a written request verifying that the child was photo listed for six (6) months and documentation must be provided to demonstrate the family is a newly approved recruited family and the following conditions are true:

- a. The identified family is not a relative or foster parent to the adoptive child.
- b. The identified family has either not previously provided care for the child or has previously provided care and during the time that the child was photo listed had indicated in writing that they were not interested in adopting the child. The written document from the family must be submitted with the MARE payment request.

The Contractor is eligible for the MARE rate if the child's foster care case remains with MDHHS and, at the time of referral, there was no identified adoptive resource. The Contractor must register the child for photo listing within 30 days of acceptance of the case if no adoptive resource has been identified. If the Contractor applies for the MARE rate there must be a written explanation of why the adoptive family was not identified as a potential adoptive resource within the first 30 days after acceptance of the case.

12) Unit Title: Residential

Unit Definition: The Order Placing Child is signed and dated by the court for a child who has been placed in residential care (defined as staffed institutional care, not including foster group homes) and the child is under the Contractor's supervision for Adoption Services.

13) Unit Title: MARE and Residential Rate with Pre-placement

Unit Definition: When a child photo-listed with MARE or in a Residential facility is placed into a prospective adoptive home through a foster care placement to allow for a period of adjustment and supervision (prior to petition to place for adoption), the reimbursement for the appropriate rate shall be calculated based on the date the pre-placement began.

The MARE, and Residential Rate will be applied when the court signs the Order Placing Child within two hundred seventy (270) days of placing the child in the home for foster care services.

14) Unit Title: In-State Transfer Services

Unit Definition: The Contractor completes satisfactory services requested for pre-placement activities for a child under the supervision of the Contractor and referred for adoptive placement to another contractor or MDHHS local office. The MDHHS monitor for the foster care case shall define satisfactory services.

15) Unit Title: Interstate Existing Services

Unit Definition: A child under the adoption services supervision of the Contractor is referred for adoptive placement through a private or public agency in the state where the adoptive family resides and the child has previously been placed with the family through Interstate foster/relative care prior to termination of parental rights and assignment of an adoption worker.

16) Unit Title: Interstate New Services

Unit Definition: A child under the adoption services supervision of the Contractor is referred for adoptive placement through a private or public agency in the state where the adoptive family resides and the child has not been placed with the family through Interstate foster/relative care prior to termination of parental rights and assignment of an adoption worker.

17) Unit Title: ICPC Referred from Other U.S. States

A child under the child welfare system of another ICPC participating state is referred to Michigan for adoption services through ICPC. DHS-3600 (for Adoption Services) is required from the local Michigan county.

18) Unit Title: Competing Parties

More than one party is interested in adopting a particular child or sibling group and is assessed by the contractor in one of the following formats: Preliminary Adoptive Family Assessment, BCAL 3130 Initial Foster Home/Adoption Evaluation, or DHS 612, Adoptive Family Assessment Addendum. The rate paid on a competing parties' case shall not fall below the "Baseline" rate category, unless an agency has failed to act according to the timeframes outlined in policy.

h. Adoption Training Payments

A payment will be made to the Contractor for each staff that completes adoption training and passes competency tests as required:

1) Completion of the Caseworker Training

Payment will be \$6,000 for completion of a MDHHS Pre-Service Institute training that includes a total of nine weeks of competency-based classroom and field training within 16 weeks of hire.

2) Completion of the Child Welfare Certificate (CWC) Training

Payment will be a maximum of \$3,000, calculated on an actual cost reimbursement basis, for completion of the Office of Workforce Development and Training (OWDT)-CWC training. This training includes a minimum of five weeks of competency-based classroom, and field training if the caseworker certificate holder passes the competency evaluation.

3) Completion of the Child Welfare Supervisor Training.

Payment will be a maximum of \$1500, calculated on an actual cost reimbursement basis for completion of the Supervisor Training. This includes a minimum of one week of training within 90 days of hire/promotion if the supervisor passes the competency-based evaluation including the written exam through OWDT.

All supervisors hired on or after January 1, 2017 must complete the Supervisor Training and pass the competency evaluation.

4) Completion of the adoption Program Specific Transfer Training (PSTT) within 6 months of hire.

Payment will be a maximum of \$2,800, calculated on an actual cost reimbursement basis for completion of the adoption PSTT training. This training is the same as the Adoption Core Training for adoption caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated. If a supervisor has not completed this training since April 1, 2006, they need to complete this PSTT Training within 6 months of hire.

3.2. Performance Evaluation and Monitoring

The services provided by the Contractor under this Agreement shall be evaluated and assessed at least annually by MDHHS on the basis of the criteria outlined in Section 2.11.

MDHHS shall perform contract monitoring through activities such as:

- a. Auditing expenditure reports.

- b. Conducting on-site monitoring.
- c. Reviewing and analyzing reports.

4. STANDARD TERMS

4.1 Duties of Contractor

Contractor must perform the services and provide the deliverables described in Section 2.10 – Services to be Provided (the “Agreement Activities”). An obligation to provide delivery of any commodity is considered a service and is an Agreement Activity.

Contractor must furnish all labor, equipment, materials, and supplies necessary for the performance of the Agreement Activities, and meet operational standards, unless otherwise specified in Section 2.10 – Services to be Provided.

Contractor must:

- a. Perform the Agreement 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 this Agreement;
- c. Provide all Agreement Activities in good quality, with no material defects;
- d. Not interfere with MDHHS's operations;
- e. Obtain and maintain all necessary licenses, permits or other authorizations necessary for the performance of this Agreement;
- f. Cooperate with MDHHS, including MDHHS's quality assurance personnel, and any third party to achieve the objectives of this Agreement;
- g. Return to MDHHS any State-furnished equipment or other resources in the same condition as when provided when no longer required for this Agreement;
- h. Not make any media releases without prior written authorization from MDHHS;
- i. Assign to MDHHS 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 this Agreement;
- j. Comply with all State physical and IT security policies and standards which will be made available upon request; and
- k. Provide MDHHS priority in performance of this Agreement except as mandated by federal disaster response requirements.

Any breach under this provision 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.

4.2 Notices

All notices and other communications required or permitted under this Agreement 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.

4.3 Reserved

4.4 Reserved

4.5 Performance Guarantee

Contractor must at all times have financial resources sufficient, in the opinion of MDHHS, to ensure performance of this Agreement and must provide proof upon request. MDHHS may require a performance bond if, in the opinion of MDHHS, it will ensure performance of this Agreement.

4.6 Insurance Requirements

Contractor must maintain the insurances identified below and is responsible for all deductibles. All required insurance must:

- a. Protect the State from claims that may arise out of, are alleged to arise out of, or result from Contractor's or a subcontractor's performance;
- b. Be primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the State; and
- c. Be provided by a company with an A.M. Best rating of "A" or better and a financial size of VII or better.

Insurance Type	Additional Requirements
Commercial General Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Each Occurrence Limit \$1,000,000 Personal & Advertising Injury Limit \$2,000,000 General Aggregate Limit \$2,000,000 Products/Completed Operations	Contractor must have their policy endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds using endorsement CG 20 10 11 85, or

<u>Deductible Maximum:</u> \$50,000 Each Occurrence	both CG 2010 07 04 and CG 2037 07 04. If the contractor will deal with children, schools, or the cognitively impaired, coverage must not have exclusions or limitations related to sexual abuse and molestation liability.
Automobile Liability Insurance	
<u>Minimal Limits:</u> \$1,000,000 Per Occurrence	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) include Hired and Non-Owned Automobile coverage.
Workers' Compensation Insurance	
<u>Minimal Limits:</u> Coverage according to applicable laws governing work activities.	Waiver of subrogation, except where waiver is prohibited by law.
Employers Liability Insurance	
<u>Minimal Limits:</u> \$500,000 Each Accident \$500,000 Each Employee by Disease \$500,000 Aggregate Disease.	
Privacy and Security Liability (Cyber Liability) Liability Insurance	

<u>Minimal Limits:</u> \$1,000,000 Each Occurrence \$1,000,000 Annual Aggregate	Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds; and (2) cover information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

If any of the required policies provide claims-made coverage, the Contractor must:

- a. Provide coverage with a retroactive date before the effective date of the Agreement or the beginning of Agreement Activities;
- b. Maintain coverage and provide evidence of coverage for at least three years after completion of the Agreement Activities; and
- c. If coverage is canceled or not renewed, and not replaced with another claims-made policy form with a retroactive date prior to the Agreement effective date, Contractor must purchase extended reporting coverage for a minimum of three years after completion of work.

Contractor must:

- a. Provide insurance certificates to the Contract Administrator, containing the agreement or purchase order number, at Agreement formation and within 20 calendar days of the expiration date of the applicable policies;
- b. Require that subcontractors maintain the required insurances contained in this Section;
- c. Notify the Contract Administrator within five business days if any insurance is cancelled; and
- d. Waive all rights against the State for damages covered by insurance. Failure to maintain the required insurance does not limit this waiver.

Contractors who are self-insured must provide the following:

- a. Proof of self-insurance from the Michigan Department of Insurance and Financial Services for auto liability.
- b. Proof of self-insurance from the Michigan Department of Licensing and Regulatory Affairs for worker's compensation and employer's liability.
- c. A copy of their most recent, independently audited financial statements.

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

4.7 Reserved

4.8 Extended Purchasing Program

Upon written agreement between MDHHS and the Contractor, this Agreement may be extended to: (a) MiDEAL members, (b) other states (including governmental subdivisions and authorized entities), or (c) State of Michigan employees. 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.

If extended, Contractor must supply all Agreement Activities at the established Agreement prices and terms, and MDHHS 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.

4.9 Independent Contractor

Contractor is an independent contractor and assumes all rights, obligations and liabilities set forth in this Agreement. Contractor, its employees, and agents will not be considered employees of MDHHS. No partnership or joint venture relationship is created by virtue of this Agreement. Contractor, and not MDHHS, 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.

4.10 Subcontracting

Contractor may not delegate any of its obligations under this Agreement without the prior written approval of MDHHS. Contractor must notify MDHHS prior to the proposed delegation, and provide MDHHS 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 Agreement Activities;
- b. Make all payments to the subcontractor; and

c. Incorporate the terms and conditions contained in this Agreement in any subcontract with a subcontractor.

Contractor remains responsible for the completion of the Agreement Activities, compliance with the terms of this Agreement, and the acts and omissions of the subcontractor. MDHHS, in its sole discretion, may require the replacement of any subcontractor.

4.11 Staffing

MDHHS's Contract Administrator may require Contractor to remove or reassign personnel by providing a notice to Contractor.

4.12 Reserved

4.13 Assignment

Contractor may not assign this Agreement to any other party without the prior approval of MDHHS. Upon notice to Contractor, MDHHS, in its sole discretion, may assign in whole or in part, its rights or responsibilities under this Agreement to any other party. If MDHHS determines that a novation of this Agreement to a third party is necessary, Contractor will agree to the novation and provide all necessary documentation and signatures.

4.14 Change of Control

Contractor will notify, at least 90 calendar days before the effective date, MDHHS of a change in Contractor's organizational structure or ownership. For purposes of this Agreement, 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; or
- f. 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 Agreement and all of its obligations under this Agreement.

4.15 Reserved

4.16 Acceptance

Agreement Activities are subject to inspection and testing by MDHHS within 30 calendar days of MDHHS's receipt of them ("State Review Period"), unless otherwise provided in Section 2.10 – Services to be Provided. If the Agreement Activities are not fully accepted by MDHHS, MDHHS will notify Contractor by the end of the State Review Period that either: (a) the Agreement Activities are accepted, but noted deficiencies must be corrected; or (b) the Agreement Activities are rejected. If MDHHS finds material deficiencies, it may: (i) reject the Agreement Activities without performing any further inspections; (ii) demand performance at no additional cost; or (iii) terminate this Agreement in accordance with Section 4.23, Termination for Cause.

Within 10 business days from the date of Contractor's receipt of notification of acceptance with deficiencies or rejection of any Agreement Activities, Contractor must cure, at no additional cost, the deficiency and deliver unequivocally acceptable Agreement Activities to MDHHS. If acceptance with deficiencies or rejection of the Agreement Activities impacts the content or delivery of other non-completed Agreement Activities, the parties' respective Program Managers must determine an agreed to number of days for re-submission that minimizes the overall impact to this Agreement. 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 Agreement.

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

4.17 Reserved

4.18 Reserved

4.19 Reserved

4.20 Terms of Payment

Invoices must conform to the requirements communicated from time-to-time by MDHHS. All undisputed amounts are payable within 45 days of MDHHS's receipt. Contractor may only charge for Agreement Activities performed as

specified in Section 2.10 – Services to be Provided. Invoices must include an itemized statement of all charges. MDHHS 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 MDHHS's exclusive use. Notwithstanding the foregoing, all prices are inclusive 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 MDHHS under this Agreement.

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

MDHHS will only disburse payments under this Agreement through Electronic Funds Transfer (EFT). Contractor must register with the State at <http://www.michigan.gov/cpexpress> to receive electronic fund transfer payments. If Contractor does not register, MDHHS is not liable for failure to provide payment.

Without prejudice to any other right or remedy it may have, MDHHS reserves the right to set off at any time any amount then due and owing to it by Contractor against any amount payable by MDHHS to Contractor under this Agreement.

4.21 Reserved

4.22 Stop Work Order

MDHHS may suspend any or all activities under this Agreement at any time. MDHHS 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, MDHHS will either: (a) issue a notice authorizing Contractor to resume work, or (b) terminate this Agreement or purchase order. MDHHS will not pay for Agreement Activities, Contractor's lost profits, or any additional compensation during a stop work period.

4.23 Termination for Cause

MDHHS may terminate this Agreement for cause, in whole or in part, if Contractor, as determined by MDHHS:

- 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 MDHHS 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 Agreement will not be construed to mean that other breaches are not material.

If MDHHS terminates this Agreement under this Section, MDHHS 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 this Agreement, 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 4.24, Termination for Convenience.

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

4.24 Termination for Convenience

MDHHS may immediately terminate this Agreement 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 Agreement Activities immediately, or (b) continue to perform the Agreement Activities in accordance with Section 4.25, Transition Responsibilities. If MDHHS terminates this Agreement for convenience, MDHHS will pay all reasonable costs, as determined by MDHHS, for MDHHS approved Transition Responsibilities.

The Contractor may terminate this Agreement upon 30 days written notice to MDHHS at any time prior to the completion of the Agreement period.

4.25 Transition Responsibilities

Upon termination or expiration of this Agreement for any reason, Contractor must, for a period of time specified by MDHHS (not to exceed 90 calendar days), provide all reasonable transition assistance requested by MDHHS, to allow for the expired or terminated portion of the Agreement Activities to continue without interruption or adverse effect, and to facilitate the orderly transfer of such Agreement Activities to MDHHS or its designees. Such transition assistance may include, but is not limited to:

- a. Continuing to perform the Agreement Activities at the established Agreement rates;
- b. Taking all reasonable and necessary measures to transition performance of the work, including all applicable Agreement Activities, training, equipment, software, leases, reports and other documentation, to MDHHS or MDHHS's designee;
- c. Taking all necessary and appropriate steps, or such other action as MDHHS may direct, to preserve, maintain, protect, or return to MDHHS all materials, data, property, and confidential information provided directly or indirectly to Contractor by any entity, agent, vendor, or employee of MDHHS;
- d. Transferring title in and delivering to MDHHS, at MDHHS's discretion, all completed or partially completed deliverables prepared under this Agreement as of the Agreement termination date; and
- e. Preparing an accurate accounting from which MDHHS and Contractor may reconcile all outstanding accounts (collectively, "Transition Responsibilities").

This Agreement will automatically be extended through the end of the transition period.

4.26 General Indemnification

Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to:

- a. Any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Agreement;
- 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).

MDHHS 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 MDHHS, demonstrate its financial ability to carry out these obligations.

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

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

4.27 Infringement Remedies

If, in either party's opinion, any piece of equipment, software, commodity, or service supplied by Contractor or its subcontractors, or its operation, use or reproduction, is likely to become the subject of a copyright, patent, trademark, or trade secret infringement claim, Contractor must, at its expense:

- a. Procure for MDHHS 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 MDHHS with appropriate credits to MDHHS against Contractor's charges and reimburse MDHHS for any losses or costs incurred as a consequence of MDHHS ceasing its use and returning it.

4.28 Limitation of Liability

MDHHS is not liable for consequential, incidental, indirect, or special damages, regardless of the nature of the action.

4.29 Disclosure of Litigation, or Other Proceeding

Contractor must notify MDHHS 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 this Agreement, including:

- a.A criminal Proceeding;
- b.A parole or probation Proceeding;
- c.A Proceeding under the Sarbanes-Oxley Act;
- d.A civil Proceeding involving:
 - 1)A claim that might reasonably be expected to adversely affect Contractor's viability or financial stability; or
 - 2)A governmental or public entity's claim or written allegation of fraud; or
- e.A Proceeding involving any license that Contractor is required to possess in order to perform under this Agreement.

4.30 Reserved

4.31 State Data

a.Ownership. MDHHS's data ("**State Data**," which will be treated by Contractor as Confidential Information) includes:

- 1)MDHHS's data collected, used, processed, stored, or generated as the result of the Agreement Activities;
- 2)Personally identifiable information ("PII") collected, used, processed, stored, or generated as the result of the Agreement 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,
- 3)Personal health information ("PHI") collected, used, processed, stored, or generated as the result of the Agreement 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 MDHHS and all right, title, and interest in the same is reserved by MDHHS.

This Section survives the termination of this Agreement.

b. Contractor Use of State Data. Contractor is provided a limited license to State Data for the sole and exclusive purpose of providing the Agreement Activities, including a license to collect, process, store, generate, and display State Data only to the extent necessary in the provision of the Agreement Activities. Contractor must:

- 1) 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 Agreement and applicable law to avoid unauthorized access, use, disclosure, or loss;
- 2) Use and disclose State Data solely and exclusively for the purpose of providing the Agreement Activities, such use and disclosure being in accordance with this Agreement, any applicable Statement of Work, and applicable law; and
- 3) Not use, sell, rent, transfer, distribute, or otherwise disclose or make available State Data for Contractor's own purposes or for the benefit of anyone other than MDHHS without MDHHS's prior written consent.

This Section survives the termination of this Agreement.

c. Extraction of State Data. Contractor must, within five business days of MDHHS's request, provide MDHHS, 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 MDHHS.

d. Backup and Recovery of State Data. Unless otherwise specified in Section 2.5 – Services to be Delivered, Contractor is responsible for maintaining a backup of State Data and for an orderly and timely recovery of such data. Unless otherwise described in Section 2.10 – Services to be Provided, Contractor must maintain a contemporaneous backup of State Data that can be recovered within two hours at any point in time.

e. Loss of Data. In the event of any act, error or omission, negligence, misconduct, or breach that compromises or is suspected to compromise the security, confidentiality, or integrity of State Data or the physical, technical, administrative, or organizational safeguards put in place by Contractor that relate to the protection of the security, confidentiality, or integrity of State Data, Contractor must, as applicable:

- 1) Notify MDHHS as soon as practicable but no later than 24 hours of becoming aware of such occurrence;
- 2) Cooperate with MDHHS 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 MDHHS;

- 3) In the case of PII or PHI, at MDHHS's sole election, (i) notify the affected individuals who comprise the PII or PHI as soon as practicable but no later than is required to comply with applicable law, or, in the absence of any legally required notification period, within five calendar days of the occurrence; or (ii) reimburse MDHHS for any costs in notifying the affected individuals;
- 4) 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;
- 5) Perform or take any other actions required to comply with applicable law as a result of the occurrence;
- 6) Without limiting Contractor's obligations of indemnification as further described in this Agreement, indemnify, defend, and hold harmless MDHHS for any and all claims, including reasonable attorneys' fees, costs, and expenses incidental thereto, which may be suffered by, accrued against, charged to, or recoverable from MDHHS in connection with the occurrence;
- 7) Be responsible for recreating lost State Data in the manner and on the schedule set by MDHHS without charge to MDHHS; and,
- 8) Provide to MDHHS a detailed plan within 10 calendar days of the occurrence describing the measures Contractor will undertake to prevent a future occurrence.

Notification to affected individuals, as described above, must comply with applicable law, be written in plain language, and contain, at a minimum: name and contact information of Contractor's representative; a description of the nature of the loss; a list of the types of data involved; the known or approximate date of the loss; how such loss may affect the affected individual; what steps Contractor has taken to protect the affected individual; what steps the affected individual can take to protect himself or herself; contact information for major credit card reporting agencies; and, information regarding the credit and identity monitoring services to be provided by Contractor.

This Section survives the termination of this Agreement.

4.32 Non-Disclosure of Confidential Information

The parties acknowledge that each party may be exposed to or acquire communication or data of the other party that is confidential, privileged communication not intended to be disclosed to third parties. The provisions of this Section survive the termination of this Agreement.

a. Meaning of Confidential Information. For the purposes of this Agreement, the term "**Confidential Information**" means all information and documentation of a party that:

- 1) Has been marked "confidential" or with words of similar meaning, at the time of disclosure by such party;
- 2) If disclosed orally or not marked "confidential" or with words of similar meaning, was subsequently summarized in writing by the disclosing party and marked "confidential" or with words of similar meaning; and,
- 3) Should reasonably be recognized as confidential information of the disclosing party.

The term "Confidential Information" does not include any information or documentation that was:

- 1) Subject to disclosure under the Michigan Freedom of Information Act (FOIA);
- 2) Already in the possession of the receiving party without an obligation of confidentiality;
- 3) Developed independently by the receiving party, as demonstrated by the receiving party, without violating the disclosing party's proprietary rights;
- 4) Obtained from a source other than the disclosing party without an obligation of confidentiality; or,
- 5) 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 Agreement, 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 Agreement or to use such Confidential Information for any purposes whatsoever other than the performance of this Agreement. 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:

- 1) Use of a subcontractor is authorized under this Agreement;
- 2) The disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's responsibilities; and
- 3) Contractor obligates the subcontractor in a written contract to maintain MDHHS's Confidential Information in confidence.

At MDHHS'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 Agreement 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 MDHHS, at the sole election of MDHHS, the immediate termination, without liability to MDHHS, of this Agreement or any Statement of Work corresponding to the breach or threatened breach.
- e. Surrender of Confidential Information upon Termination. Upon termination of this Agreement or a Statement of Work, in whole or in part, each party must, within five 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 MDHHS following the timeframe and procedure described further in this Agreement. Should Contractor or MDHHS 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 five calendar days from the date of termination to the other party. However, MDHHS'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.

4.33 Data Privacy and Information Security

- a. Undertaking by Contractor. Without limiting Contractor's obligation of confidentiality as further described, Contractor is responsible for

establishing and maintaining a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to:

- 1) Ensure the security and confidentiality of the State Data;
- 2) Protect against any anticipated threats or hazards to the security or integrity of the State Data;
- 3) Protect against unauthorized disclosure, access to, or use of the State Data;
- 4) Ensure the proper disposal of State Data; and
- 5) 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 MDHHS, 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 MDHHS.

c. Right of Audit by the State. Without limiting any other audit rights of MDHHS, MDHHS has the right to review Contractor's data privacy and information security program prior to the commencement of Agreement Activities and from time to time during the term of this Agreement. During the providing of the Agreement Activities, on an ongoing basis from time to time and without notice, MDHHS, 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 MDHHS, Contractor agrees to complete, within 45 calendar days of receipt, an audit questionnaire provided by MDHHS regarding Contractor's data privacy and information security program.

d. Audit Findings. Contractor must implement any required safeguards as identified by MDHHS or by any audit of Contractor's data privacy and information security program.

e. State's Right to Termination for Deficiencies. MDHHS reserves the right, at its sole election, to immediately terminate this Agreement or a Statement of Work without limitation and without liability if MDHHS determines that Contractor fails or has failed to meet its obligations under this Section.

4.34 Reserved

4.35 Reserved

4.36 Records Maintenance, Inspection, Examination, and Audit

MDHHS or its designee may audit Contractor to verify compliance with this Agreement. Contractor must retain, and provide to MDHHS or its designee and the auditor general upon request, all financial and accounting records related to this Agreement through the term of this Agreement and for four years after the latter of termination, expiration, or final payment under this Agreement 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, MDHHS and its authorized representatives or designees have the right to enter and inspect Contractor's premises or any other places where Agreement Activities are being performed, and examine, copy, and audit all records related to this Agreement. Contractor must cooperate and provide reasonable assistance. If any financial errors are revealed, the amount in error must be reflected as a credit or debit on subsequent invoices until the amount is paid or refunded. Any remaining balance at the end of this Agreement 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 Agreement Activities in connection with this Agreement.

4.37 Warranties and Representations

Contractor represents and warrants:

- a. Contractor is the owner or licensee of any Agreement Activities that it licenses, sells, or develops and Contractor has the rights necessary to convey title, ownership rights, or licensed use;
- b. All Agreement Activities are delivered free from any security interest, lien, or encumbrance and will continue in that respect;
- c. The Agreement 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 MDHHS or its designee any manufacturer's warranty for the Agreement Activities;
- e. The Agreement Activities are merchantable and fit for the specific purposes identified in this Agreement;
- f. The Agreement signatory has the authority to enter into this Agreement;
- g. All information furnished by Contractor in connection with this Agreement fairly and accurately represents Contractor's business, properties, finances, and operations as of the dates covered by the information, and Contractor will inform MDHHS of any material adverse changes; and

h. All information furnished and representations made in connection with the award of this Agreement is true, accurate, and complete, and contains no false statements or omits any fact that would make the information misleading.

A breach of this Section is considered a material breach of this Agreement, which entitles MDHHS to terminate this Agreement under Section 4.23, Termination for Cause.

4.38 Conflicts and Ethics

Contractor will uphold high ethical standards and is prohibited from:

- a. Holding or acquiring an interest that would conflict with this Agreement;
- b. Doing anything that creates an appearance of impropriety with respect to the award or performance of this Agreement;
- 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 this Agreement.

Contractor must immediately notify MDHHS 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 Agreement Activities in connection with this Agreement.

4.39 Compliance with Laws

Contractor must comply with all federal, state and local laws, rules and regulations.

4.40 Reserved

4.41 Reserved

4.42 Nondiscrimination

Under the Elliott-Larsen Civil Rights Act, 1976 PA 453, MCL 37.2101, et seq., and the Persons with Disabilities Civil Rights Act, 1976 PA 220, MCL 37.1101, et seq., Contractor and its subcontractors agree not to discriminate against an employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight, marital status, or mental or physical disability. Breach of this covenant is a material breach of this Agreement.

4.43 Unfair Labor Practice

Under MCL 423.324, MDHHS may void any Agreement with a Contractor or subcontractor who appears on the Unfair Labor Practice register compiled under MCL 423.322.

4.44 Governing Law

This Agreement 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 Agreement are governed by Michigan law, excluding choice-of-law principles. Any dispute arising from this Agreement must be resolved in Michigan Court of Claims. Contractor consents to venue in Ingham County, and waives any objections, such as lack of personal jurisdiction or forum non conveniens. Contractor must appoint agents in Michigan to receive service of process.

4.45 Non-Exclusivity

Nothing contained in this Agreement is intended nor will be construed as creating any requirements contract with Contractor. This Agreement does not restrict the State or its agencies from acquiring similar, equal, or like Agreement Activities from other sources.

4.46 Force Majeure

Neither party will be in breach of this Agreement 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, MDHHS may immediately contract with a third party.

4.47 Dispute Resolution

The parties will endeavor to resolve any Agreement dispute in accordance with this provision. 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 MDHHS's right to terminate this Agreement.

4.48 Media Releases

News releases (including promotional literature and commercial advertisements) pertaining to the Agreement or project to which it relates must not be made without prior written MDHHS approval, and then only in accordance with the explicit written instructions of MDHHS.

4.49 Website Incorporation

MDHHS is not bound by any content on Contractor's website unless expressly incorporated directly into this Agreement.

4.50 Entire Agreement

This Agreement is the entire agreement of the parties related to the Agreement Activities. This Agreement supersedes and replaces all previous understandings and agreements between the parties for the Agreement Activities.

4.51 Severability

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

4.52 Waiver

Failure to enforce any provision of this Agreement will not constitute a waiver.

4.53 Survival

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

4.54 Agreement Modification

This Agreement may not be amended except by signed agreement between the parties. Notwithstanding the foregoing, no subsequent Statement of Work or amendment executed after the effective date will be construed to amend this Agreement unless it specifically states its intent to do so and cites the section or sections amended.

The Contractor shall, upon request of MDHHS and receipt of a proposed amendment, amend this Agreement, if and when required in the opinion of MDHHS, due to the revision of federal or state laws or regulations.

4.55 Options to Renew

At the discretion of MDHHS, this Agreement may be renewed in writing by an amendment not less than 30 days before its expiration. This Agreement may be renewed for up to two additional one-year periods.

4.56 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Assurance is hereby given to MDHHS that the Contractor will comply with Federal Regulation, 2 CFR part 180 and certifies to the best of its knowledge and belief that it, its employees and its subcontractors:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. Have not within a three-year period preceding this Agreement been convicted of or had civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in section 2, and;
- d. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.

Where the parties are unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this Agreement.

The Contractor certifies to the best of its knowledge that within the past three years, the Contractor has not;

- a. Failed to substantially perform a state contract, agreement, or subcontract according to its terms, conditions, and specifications within specified time limits.
- b. Refused to provide information or documents required by a contract or agreement including, but not limited to information or documents necessary for monitoring contract performance.
- c. Failed to respond to requests for information regarding contract or agreement compliance, or accumulated repeated substantiated complaints regarding performance of a contract or agreement.
- d. Failed to perform a state contract, agreement, or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.

The Contractor shall include Section 4.56 (Certification Regarding Debarment, Suspension, and Other Responsibility Matters) language as written above in all subcontracts with other parties.

The Contractor shall require each primary subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether at the time of the award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the state of Michigan. The Contractor shall then inform MDHHS of the subcontractor's status and reasons for the Contractor's decision to use such subcontractor, if the Contractor so decides.

If it is determined that the Contractor knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, MDHHS may immediately terminate this Agreement.

If the state finds that grounds to debar exist, it shall send notice to the Contractor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the Contractor does not respond with a written request for a hearing within 20 calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight years. After the debarment period expires, the Contractor may reapply for inclusion on bidder lists through the regular application process by authority of Executive Order 2003-1.

EXHIBIT 5

State of Michigan
Department of Human Services
Office of Contracts and Purchasing (OCP)
PO Box 30037, Lansing, MI 48909
Or
235 S. Grand Avenue, Suite 1201, Lansing, MI 48933

Received

AUG 20 2014

Contracts & Purchasing

AGREEMENT NO: PAFC15-63011
Between
THE STATE OF MICHIGAN
DEPARTMENT OF HUMAN SERVICES
And

CONTRACTOR		PRIMARY CONTACT	EMAIL
Bethany Christian Services		Brian DeVos	bdv@bethany.org
CONTRACTOR ADDRESS			TELEPHONE
901 Eastern Avenue, NE; Grand Rapids, MI 49503-1201			616-254-7717
STATE CONTACT	NAME	TELEPHONE	EMAIL
Contract Administrator	Amanda Doane	- -	DoaneA@michigan.gov
OCP Analyst	Melanie Sanford	- -	SanfordM2@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Placing Agency Foster Care		
GEOGRAPHIC AREA	Statewide		
INITIAL TERM	EFFECTIVE DATE*	EXPIRATION DATE	AVAILABLE OPTION YEARS
2 Years	October 1, 2014	September 30, 2016	2
MISCELLANEOUS INFORMATION			
ESTIMATED CONTRACT VALUE AT TIME OF EXECUTION		\$2,860,000.00	
CONTRACT TYPE	Per Diem		

*The effective date of the contract shall be the date listed in the "Effective Date" box above, or the date of Department of Human Services (DHS) signature below, whichever is later.

The undersigned have the lawful authority to bind the Contractor and DHS to the terms set forth in this Agreement. Section 291 of the fiscal year 2013 Omnibus Budget, PA 200 of 2012, requires verification that all new employees of the Contractor and all new employees of any approved subcontractor, working under this Agreement, are legally present to work in the United States. The Contractor shall perform this verification using the E-verify system (<http://www.uscis.gov/portal/site/uscis>). The Contractor's signature on this Agreement is the Contractor's certification that verification has and will be performed. The Contractor's signature also certifies that the Contractor is not an Iran linked business as defined in MCL 129.312.

FOR THE CONTRACTOR:

Bethany Christian Services

Contractor

Signature of Director or Authorized Designee

Brian J. De Vos, Vice President
Child and Family Services

Print Name

August 15, 2014

Date

FOR THE STATE:

DEPARTMENT OF HUMAN SERVICES

Signature of Director or Authorized Designee

Duane Berger

Print Name

9/18/2014

Date

Contract No: PAFC15-63011

1st Year Amount: \$1,430,000.00

2nd Year Amount: \$1,430,000.00

Total Contract Amount: \$2,860,000.00

This Agreement will be in effect from the date of DHS signature through September 30, 2016. No service will be provided and no costs to the state will be incurred before October 1, 2014 or the effective date of the Agreement, whichever is later. Throughout this Agreement, the date of DHS signature or October 1, 2014, whichever is later, shall be referred to as the begin date.

I. CONTRACTOR RESPONSIBILITIES

A. Location of Facilities

The Contractor shall provide services in client, relative caregiver, and foster parent homes.

The Contractor shall provide services described herein at the following location:

30685 Barrington; Suite 140; Madison Heights, MI 48071-5111

B. Client Profile

1. Eligible Client Population:

Children for whom the family court has issued an order which makes the Department of Human Services (DHS) responsible for the child's placement, care and supervision.

OR

Children for whom the family court has authorized a placement in the parental home in a Trial Reunification living arrangement.

The period of time eligible for a Trial Reunification shall not exceed 180 days from the date of the child(ren)'s placement in a parental home. Child(ren) must enter Trial Reunification directly from foster care and the family court must retain jurisdiction with care and custody continuing with DHS.

The Contractor shall provide foster care services to all children placed under this Agreement.

C. License and Provider Number

The DHS Bureau of Children and Adult Licensing (BCAL) is the licensing agency for Child Placement Agencies (CPA). A license is issued to a certain person or

Contract Number: PAFC15-63011

organization at a specific location, is non-transferable, and remains the property of DHS. Therefore, an institution must be established at a specific location. The Contractor shall ensure that, for the duration of this Agreement, it shall maintain a license for those program areas and services that are provided for in this Agreement. If the Contractor fails to comply with this section, DHS may terminate this Agreement for default.

The Contractor is licensed to provide service under this Agreement under the following license number: CB630200978

Bridges Provider Number: 6358579

MiSACWIS Provider Number: 10400641

D. Geographic Area to be Served

1. The Contractor shall provide all services described herein in the following geographic area: Statewide

E. Compliance Requirements

The Contractor shall comply with all applicable DHS policy Children's Foster Care Manual (FOM) and DHS policy amendments (including interim policy bulletins) and all applicable provisions in the Modified Settlement Agreement and Consent Order entered in Dwayne B. v. Snyder, et al., 2:06-cv-13548.

DHS policies, amendments and policy bulletins, are published on the following internet link: <http://www.michigan.gov/dhs>

Throughout the term of this Agreement, the Contractor shall ensure that it provides all applicable DHS policy and DHS policy amendments (including interim policy bulletins) to social service staff. The Contractor shall ensure that social service staff complies with all applicable requirements.

The Contractor shall participate in random moment time studies (RMTS). An RMTS is a process where participants are emailed short surveys and asked to indicate what they were doing at an assigned time. The time study is required to determine the amount of time spent on various activities. Based on these results, DHS determines the amount that can be charged to various funding sources.

The Contractor shall assure the provision of all treatment services required based on an assessment of each child and parents' needs. Treatment services include, but are not limited to the provision of counseling/therapy for each child. The Contractor shall ensure the provision of all medical, dental and behavioral health services required based on an assessment of each child's needs. The Contractor may utilize Medicaid (or private insurance) reimbursable services to comply with this requirement. If a counseling or

Contract Number: PAFC15-63011

therapy service is not available or accessible for each child, the Contractor is responsible for the direct provision of the service.

If DHS makes a referral to a child placing agency for foster care case management services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral immediately, within one hour, of receipt of the referral. If a need for placement is imminent, DHS may make referrals for placement concurrently to other contracted providers.

Compliance with DHS Modified Settlement Agreement and Consent Order

The Contractor shall ensure compliance with the applicable requirements of the following sections in Dwayne B. v. Rick Snyder Modified Settlement Agreement and Consent Order hereinafter referred to as the Modified Settlement Agreement:

1. Section VI. Staff Qualifications, Training, Caseloads and Supervision
2. Section VII. Assessments, Case Planning and Provision of Services
3. Section VIII. Services and Placement Resources Development and Utilization
4. Section X. Placement Standards and Limitations
5. Section XI. Limitations on Use of Psychotropic Medications, Corporal Punishment, and Seclusion/Isolation
6. Section XII. DHS Supervision of Contract Agencies

Additional Requirements:

1. Foster Home Licensing Data Entry

The Contractor shall document all recruitment and licensing activities into the tracking system identified by DHS.

2. Child Protection Law Reporting Requirements

- a. The Contractor shall ensure that all employees who have reasonable cause to suspect child abuse or neglect shall report any suspected abuse or neglect of a child in care to DHS for investigation as required by Public Acts of 1975, Act Number 238.
- b. Failure of the Contractor or its employees to report suspected abuse or neglect of a child to DHS shall result in an immediate investigation to determine the appropriate corrective action up to and including termination of the contract.
- c. Failure of the Contractor or its employees to report suspected child abuse or neglect two or more times within a one-year period shall result in termination of the contract.

3. Cost Reporting

The Contractor shall submit annual financial cost reports based on the state's fiscal year which begins October 1 and ends September 30 in the following calendar year. The reports shall contain the actual costs

Contract Number: PAFC15-63011

incurred by providers in delivering services required in this agreement to DHS clients for the reporting period. Costs for non-DHS children are not to be included. Reports will be submitted using a template provided by DHS. The financial reports shall be submitted annually, and will be due November 30th of each fiscal year. The Contractor must comply with all other program and fiscal reporting procedures as are or may hereinafter be established by DHS. Reports shall be submitted electronically to DHS-OCP@michigan.gov with the subject line: PAFC Actual Cost Report.

4. Caseload Tracking and Reporting

The Contractor shall report to DHS caseload ratios for social services supervisors, social service staff and licensing staff in a format and within timeframes as determined by DHS.

5. Service Standards for Trial Reunification

Trial Reunification is a court-ordered placement where the child is returned from an out-of-home placement to the care of the parent or guardian from whom he or she was removed. The child remains under court supervision during the Trial Reunification period with the DHS retaining placement care and custody.

a. The Contractor shall provide the following services to children in trial reunification:

- 1) Assist in preparing the parent, child, and caregiver for the transition to trial reunification. See FOM 722-7.
- 2) A Family Team Meeting prior to placement of a child in the parental home to develop a transition plan with the parent, caregiver and child, if age appropriate. The Contractor shall have Family Team Meetings quarterly until case closure. See FOM 722-06B.
- 3) Complete a new Family Assessment of Needs and Strengths, Child Assessment of Needs and Strengths, and Safety Assessment and Safety Plan. See FOM 722-8A, 722-8B and 722-9B.
- 4) Continue case worker visit expectations as required in FOM 722-6.
- 5) Maintain support services until case closure. The Contractor shall document services needed to continue to meet the child's needs and identified providers for such services to provide continuity of services. See FOM 722-7.
- 6) Continue assessing and monitoring of the case plan and safety plan.

6. Staff Training

a. Child Welfare Training Institute: Requirements

The Contractor shall ensure that staff transferring to a foster care social service position from another children's services position that

Contract Number: PAFC15-63011

has successfully completed the Child Welfare Training Institute (CWTI) Pre-Service Institute (PSI) training in that program, shall attend and complete CWTI–Foster Care Private Agency Program Specific Transfer Training (PSTT) within six months of assuming the foster care position.

1) Child Welfare Training Institute: Registration Process

- a) The Contractor shall register all staff required to attend CWTI training by each individual staff member applying for a JJOLT secure user ID and password. To apply for a JJOLT user ID from the public DHS website, please visit <http://www.michigan.gov/dhs> or the preferred method by going directly to the CWTI web site at <http://www.michiganchildwelfaretraining.com/>
- b) Once applicable Contractor staff is registered with JJOLT, staff will have access to Omni Track Plus (OTP) within JJOLT to register for training. The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To cancel or change training registration, the Contractor will need to directly contact CWTI by telephone or email.
- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by DHS at least seven (7) days before the training commences.

b. Foster Home Certification Supervisory Staff: Training Requirements

The Contractor shall ensure that all foster home certification supervisors successfully complete certification training provided by BCAL, prior to assuming supervisory responsibility for social service workers who perform foster home licensing functions.

c. Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of CWTI training and BCAL Certification Training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

7. Relative Licensing

The Contractor may elect to facilitate the licensure of relative caregivers providing care to children in out-of-home placements that are under the direct

Contract Number: PAFC15-63011

care and supervision of DHS. Facilitation of licensure includes but is not limited to the following activities:

- a. Accept referrals of unlicensed relative caregivers from DHS, for possible licensure as a foster family home, based on the Contractor's capacity to complete the licensing process.
- b. On forms provided by DHS, and when requested by DHS, the Contractor shall report to DHS monthly on the number and characteristics of unlicensed relative homes and the children in those homes, and on progress in licensing the homes.

8. Adoption and Foster Care Analysis Reporting System Requirements

For every child placed for adoption the Contractor shall submit to the DHS Monitor the completed Adoption Finalization Report (DHS-3154-A) within fourteen (14) days of adoption finalization.

The Contractor shall enter all required child and family information into the Michigan Statewide Automated Child Welfare System (MiSACWIS) to enable DHS to comply with Federal Adoption and Foster Care Analysis and Reporting System (AFCARS) reporting requirements. Failure to comply with this reporting requirement shall result in a penalty for the Contractor as specified in Section II. B. 6. of this Agreement.

9. Payment Resolution

When the Contractor's financial records reveal that payment for a child has not been provided by DHS within 90 days of the date of service, the Contractor will seek payment resolution by contacting the direct supervisor of the assigned DHS worker in writing. Any concerns over a payment authorization or issuance that cannot be resolved within 60 days of the written notice must be reported to the DHS County Director for immediate resolution. The Contractor will apprise DHS of any ongoing, unresolved payment concerns.

10. Additional Provisions

The Contractor shall comply with the provisions of:

- a. 1984 Public Act, 114, as amended being M.C.L. 3.711 *et seq.*, Interstate Compact on the Placement of Children.
- b. 1975 Public Act 238, as amended, being M.C.L. 722.621 *et seq.*, Child Protection Law.
- c. 1982 Public Act 162, as amended, being M.C.L. 450.2101 *et seq.*, Michigan Nonprofit Corporation Act.
- d. 1994 Public Act 204, as amended, being M.C.L. 722.921 *et seq.*, Michigan Children's Ombudsman Act.
- e. 1973 Public Act 116, as amended, being M.C.L. 722.111 *et seq.*, Michigan Child Care Organization Act.

Contract Number: PAFC15-63011

- f. 1939 Public Act 288, Chapter X, being M.C.L. 710.1 *et seq.*, Michigan Adoption Code.
- g. 1984 Public Act 203, as amended, being M.C.L. 722.951 *et seq.*, Michigan Foster Care and Adoption Services Act.
- h. The Social Security Act as amended by the Multiethnic Placement Act of 1994 (MEPA); Public Law 103-382, and as amended by Section 1808 of the Small Business Job Protection, the Interethnic Adoption Provision (IEAP).
- i. The Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.*
- j. 1976 Public Act 453, as amended, being M.C.L. 37.2101 *et seq.*, Elliott-Larsen Civil Rights Act.

11. Case Management

The Contractor shall provide case management services in accordance with the "Active Efforts" requirements established in the Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.* These requirements include but are not limited to the following:

- a. Establish an American Indian child as a member of a Tribe in accordance with ICWA and as defined in the DHS Native American Affairs (NAA) manual.
- b. Provide "Active Efforts" case management services in with in accordance with ICWA and as defined in the NAA manual.
- c. Provide placement of American Indian children in accordance with "Placement Priorities" as established in ICWA and defined in the NAA manual.
- d. Provide "Expert Witness" testimony in accordance with ICWA and as defined in the NAA manual.
- e. Provide services to American Indian families within the context of their culture and ethnicity. Maintaining knowledge in the following:
 - 1) How culture and rituals influence parenting decisions.
 - 2) Determine what services and supports will be most effective.
 - 3) Knowledge and respect of tribal practices.

12. Private Agency MiSACWIS

The Contractor shall ensure that Foster Care/Social Service staff has access to the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) through a web-based interface. Requirements for MiSACWIS for CPA Contracts may be found at http://www.michigan.gov/dhs/0,4562,7-124-5455_7199---,00.html

F. Performance Measures

During the period of this Agreement, the Contractor shall work toward the achievement of the performance measures listed below.

Contract Number: PAFC15-63011

DHS shall obtain data from its systems on a quarterly basis to be determined by DHS, in a format specified by DHS.

1. Placement Stability:

Children supervised by the Contractor shall have no more than two placement settings while supervised by the individual Contractor's program, using the following minimum acceptable standards:

- a. 0 – 365 days = 86% or more will have no more than two placement settings
- b. 366 – 730 days = 73% or more will have no more than two placement settings
- c. 731 + days = 45% or more will have no more than two placement settings

2. Timeliness of Reunification:

No fewer than 43% of children supervised by the Contractor for 30 days or more shall be discharged from foster care to the home of a parent or legal guardian within 12 months of removal.

3. Permanency of Reunification:

No more than 4% of children supervised by the Contractor who were discharged from foster care to reunification will re-enter foster care in less than 12 months from the date of discharge.

4. Timeliness of Adoptions:

No fewer than 36.6% of children supervised by the Contractor for 30 days or more shall be discharged from foster care to a finalized adoption within 24 months of removal.

5. Discharge to Permanency for Children in Foster Care for Long Periods of Time:

No fewer than 29.1% of children supervised by the Contractor for the most recent 24 months shall be discharged to a permanent placement prior to their 18th birthday. Permanent placement is defined as Adoption, Guardianship or Reunification.

6. Legally-Free Children in Foster Care for Long Period of Time Who Are Discharged to Permanency:

No fewer than 98% of children supervised by the Contractor for the most recent 12 months and legally free for adoption shall be discharged to a permanent placement prior to their 18th birthday. Permanent placement is defined as Adoption, Guardianship or Reunification. (A discharge to Reunification for children "legally free" occurs when they are placed with a relative for 6 months or longer. This is for AFCARS reporting purposes by DHS.).

7. Sibling Placement:

Contract Number: PAFC15-63011

No fewer than 90% of children supervised by the Contractor shall be placed with all members of their sibling group (out of home minor siblings only) unless it has been determined that the placement with the siblings is contrary to the best interests of the children. Contrary to the best interests of the children is defined as:

- a. Placement together is harmful to one or more of the siblings; or
- b. One of the siblings has exceptional needs that can only be met in a specialized program or facility; or
- c. The size of the sibling group makes such placement impractical, notwithstanding diligent efforts to place the group together.

G. Availability of Outside Reviews and Audits

The Contractor shall make available to DHS copies of any outside reviews, non-redacted FOIA requests, or audits relating to the contracted program.

H. Financial Audit Requirements

This agreement constitutes a vendor relationship with DHS.

1. The Contractor shall have an annual financial audit conducted by an independent certified public accountant. Audits must be conducted in compliance with Generally Accepted Accounting Principles (GAAP) and all federal audit requirements.
2. The Contractor shall submit to DHS – Office of Contracts and Purchasing, no later than the fifteenth day of the ninth month following the end of the Contractor's fiscal year, copies of:
 - a. Audited financial statements.
 - b. The Independent Auditor's Report to the Contractor.
 - c. A Supplemental Schedule of Expenditures (SSE) completed in accordance with the SSE instructions. The SSE shall identify actual costs incurred for services performed under this Agreement for the period covered in the annual financial audit. Failure to submit the SSE with the annual financial audit may result in delay in payment or non-payment by DHS for administrative costs incurred or services rendered by the Contractor. Instructions for the SSE can be found at http://www.michigan.gov/dhs/0,4562,7-124-5455_7199---,00.html

Reports shall be submitted electronically to DHS-OCP@michigan.gov.

3. If an OMB-A133 Audit is required because of other Federal funding sources, the Contractor is required to provide the Audit report and all opinions and management letters to DHS-OCP@michigan.gov. The Audit

Contract Number: PAFC15-63011

must be submitted no later than the fifteenth day of the ninth month following the end of the Contractor's fiscal year.

I. Billing Procedure

The Contractor shall submit through MiSACWIS the bi-weekly roster for any youth in the Contractor's care per the instructions within MiSACWIS. The billing shall indicate the units of service provided by the Contractor and shall be submitted to DHS within 30 days from the end of the billing period.

1. The Contractor shall be paid for Trial Reunification services specified in the agreement not to exceed 180 days from the child's placement in the parental home.

a. The Contractor must submit the following on a monthly basis:

- i. A completed DHS 1582 CS Payment Voucher
- ii. A case listing that contains the following child identifying information:
 - 1) Placing Agency Provider ID
 - 2) Agency Name
 - 3) MiSACWIS log ID if known
 - 4) Child last name
 - 5) Child first name
 - 6) Recipient ID
 - 7) Foster Care case number
 - 8) Billing start date
 - 9) Billing end date
 - 10) Number of days to pay
 - 11) American Indian Y/N
 - 12) Date of court order commencing the Trial Reunification, date the foster care case was dismissed by the court and/or date the child reentered a foster care placement

Please submit the information electronically to:

DHS-FederalComplianceDivision@michigan.gov

The subject line shall read: Trial Reunification Payment

2. Classroom Training Reimbursement

The Contractor must submit a signed and dated agency letterhead memo attached to the DHS-1582 Payment Voucher that includes the following information:

- a. Worker name,
- b. Training, type, i.e. PSST, PSI etc.
- c. Training dates (time span in training)
- d. Amount of reimbursement requested.

Contract Number: PAFC15-63011

- e. A copy of the transcript reflecting the completion of the training for each foster care worker and supervisor covered by the payment voucher. This is required before accounting will issue payment.
- f. Memo signed by senior management; not the individual who attended training.

Please submit the requested information electronically to:

DHS-FederalComplianceDivision@michigan.gov

The subject line shall read: Training Payment

3. Travel Training Reimbursement

- a. The Contractor must submit:
 - i. Certification letter on agency letterhead signed and dated by senior management to include:
 - 1) Agency Federal ID Number
 - 2) Exact trainee name as registered in OmniTrack Plus (formerly JJOLT)
 - 3) Exact class name
 - 4) Beginning and ending travel dates
 - 5) Amount of reimbursement requested
 - ii. DHS-1582 Payment Voucher.
 - iii. DHS-1582 TV-NSE for each trainee.
 - iv. MapQuest (or equivalent) printouts for each travel route.
 - v. All original receipts.
 - vi. Transcripts showing the training completed.

Please submit the above information to:

Ingham County DHS/OWDT
Attention: Travel Reimbursement
PO Box 30088
5303 S. Cedar Street
Lansing, MI 48911

II. DHS RESPONSIBILITIES

A. Referrals

Upon placement, DHS shall provide the Contractor at minimum, with a court order, a Medical Authorization Card (DHS-3762), and the Individual Service Agreement (DHS-3600).

B. Payment

Contract Number: PAFC15-63011

DHS shall open and process payment within 30 days of placement, with payment authorization effective the date of the child's placement with the Contractor.

1. The entire rate paid to the Contractor for board and care, clothing and allowance shall be paid by the Contractor to the foster families providing the family foster care.
2. The Contractor's administrative rate(s) for services provided under this Agreement shall be:

<u>SVC. Code</u>	<u>Per Diem Rate</u>	<u>Effective</u>
0780	\$37.00	10/01/2013
0782	\$28.00	10/01/2013
TR	\$37.00	10/01/2013
0838	*\$2.50	10/01/2013
Legislative Increase	\$3.00	10/01/2013

*The above rate is only to be used for American Indian Children

The \$3 per diem Legislative Increase will be paid for DHS children whose fund sources include County Child Care Fund, Title IV-E and State Ward Board and Care; and who are classified as General Foster Care, service code 0780. This increase will not be paid for DHS children who are classified as General Independent Living (service code 0782), or children classified as Trial Reunification.

If the Contractor has an adoption agreement with DHS and fails to register a child on the Michigan Adoption Resource Exchange (MARE) as required in that agreement, the Contractor's Foster Care administrative rate for that child shall be reduced by twenty percent (20%) until the child is registered.

The contractor will receive reimbursement subject to appropriations for relative licensure as outlined in that years State fiscal appropriation.

If a Contractor does not submit the financial cost reports as described in Section I., CONTRACTOR RESPONSIBILITIES, the per diem administrative rate shall be reduced by \$3.00 until contractor becomes compliant with the reporting requirements.

3. The Contractor shall be paid for family foster care services specified in this Agreement at a board and care rate established by DHS. A determination of care rate may be established by DHS in accordance with the FOM when extraordinary care or expense is required of the foster parent. Special rates must have the approval of the Director of DHS' local office responsible for the supervision of the child for whom foster care is provided.
4. Payment for additional services costs not included in the per diem rate may be authorized in accordance with the FOM.

Contract Number: PAFC15-63011

When the Contractor's financial records reveal that a payment for a child has not been provided by DHS within 90 days of their acceptance of the child for case management services, the Contractor will contact the DHS County Director in writing seeking payment resolution. The Contractor shall apprise DHS of any concerns over a payment amount that cannot be reconciled at the staff level within 90 days.

5. Upon placement, DHS shall ensure that the child(ren) has adequate clothing as defined by the Clothing Inventory Checklist (DHS-3377) or shall reimburse the Contractor up to the approved limit allowed for clothing.
6. Inability of DHS to comply with the federal reporting requirements of AFCARS due to failure of the Contractor to fulfill AFCARS related reporting requirements shall result in a three percent (3%) reduction in the Contractor's administrative rate for the six month period subsequent to the due date of the AFCARS report to the Federal government.
7. Foster Care Training Payments

Payments will be made for eligible training which commenced after January 1, 2012.

A payment will be made to the Contractor for each staff that completes training and passes competency tests as required in Section VI-Staff Qualifications, Training, Caseloads and Supervision of the Modified Settlement Agreement according to the following schedule:

- a. Completion of the Child Welfare Caseworker Training

Payment will be \$6,000 total, calculated on a per diem basis, for completion of CWTI-PSI that includes a minimum of 9 weeks of competency-based classroom and field training if the caseworker passes the competency evaluation within 16 weeks of hire.

- b. Completion of the Child Welfare Certificate (CWC) Training

Payment will be \$3,000 total, calculated on a per diem basis, for completion of the CWTI-CWC that includes a minimum of five weeks of competency-based classroom and field training if the caseworker certified certificate holder passes the competency evaluation.

- c. Completion of the Child Welfare Supervisor Training

Payment will be \$1,500 total, calculated on a per diem basis, for completion of the Supervisor Training that includes a minimum of one week within 90 days of hire/promotion, if the supervisor passes the competency evaluation.

Contract Number: PAFC15-63011

d. Completion of the Child Welfare Transfer Training

The two week foster care PSTT shall be completed within six months of hire.

Payment will be \$2,800 for the completion of the foster care PSTT training. The training is the same as the Foster Care Core Training for Foster Care caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated.

8. For all Contractor staff hired on or after May 1, 1998 attending required CWTI-PSI, PSTT, and supervisor training, DHS-CWTI shall reimburse the Contractor at the Contractor's normal rate of reimbursement or State rates, whichever is less for staff trainee expenditures incurred as part of CWTI attendance. DHS-CWTI does not cover travel reimbursement for in-service training. Travel reimbursement shall be limited to lodging, mileage and parking with the following conditions:
 - a. For each trainee who attends the training session, DHS shall reimburse the Contractor up to five (5) nights lodging per week if lodging expense is incurred. If training continues for two consecutive weeks or longer and the cost of lodging is less than the mileage cost to travel to and from the Contractor's facility over the intervening weekend, the Contractor may request the director of Office of Workforce Development and Training in advance for a travel exception for weekend lodging.
 - b. For each mile of travel to a CWTI training session closest to the Contractor's site, DHS shall reimburse the Contractor for mileage to and from the training and the trainee's assigned work location or home, whichever is closer. The applicable State rate for mileage shall be the lesser of the Contractor's prevailing rate or the State's standard rate.
 - c. Parking shall be reimbursed at actual cost, documented with a receipt.
 - d. DHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from BCAL. Refer to the CWTI web site for current reimbursement information for CWTI training at <http://www.michiganchildwelfaretraining.com/Training/Travel.aspx>
9. The costs of all services provided under this Agreement are included in the above rate(s) unless otherwise noted in this Agreement.

III. GENERAL PROVISIONS – PRIVATE, NON-PROFIT AND PRIVATE, PROPRIETARY

Contract Number: PAFC15-63011

A. Options to Renew

At the discretion of DHS, this Agreement may be renewed in writing by an amendment not less than 30 days before its expiration. This Agreement may be renewed for up to two additional one-year periods.

B. Amendment

1. Federal or State Laws or Regulations

The Contractor shall, upon request of DHS and receipt of a proposed amendment, amend this Agreement, if and when required in the opinion of DHS, due to the revision of federal or state laws or regulations. If the Contractor refuses to sign such amendment within 15 days after receipt, this Agreement shall terminate upon such refusal. This Agreement may otherwise be amended only by the written consent of all the parties hereto.

2. Change Requests

DHS reserves the right to request from time to time any changes to the requirements and specifications of this Agreement and the work to be performed by the Contractor under this Agreement. During the course of ordinary business, it may become necessary for DHS to discontinue certain business practices or create additional services/deliverables. At a minimum, to the extent applicable, DHS will require the Contractor to provide a detailed outline of all work to be done, including tasks necessary to accomplish the services/deliverables, timeframes, listing of key personnel assigned, estimated hours for each individual per task, and a complete and detailed cost justification.

If the Contractor does not so notify DHS, the Contractor has no right to claim thereafter that it is entitled to additional compensation in accordance with this Agreement for performing that service or providing that deliverable.

Change Requests:

- a. By giving Contractor written notice within a reasonable time, DHS must be entitled to accept a Contractor proposal for change, to reject it, or to reach another agreement with Contractor. Should the parties agree on carrying out a change, a written amendment must be prepared and issued under this Agreement, describing the change and its effects on the services and any affected components of this Agreement.
- b. No proposed change must be performed until the proposed change has been specified in a duly executed amendment issued by DHS.

Contract Number: PAFC15-63011

- c. If DHS requests or directs the Contractor to perform any activities that Contractor believes constitute a change, the Contractor must notify DHS that it believes the requested activities are a change before beginning to work on the requested activities. If the Contractor fails to notify DHS before beginning to work on the requested activities, then the Contractor waives any right to assert any claim for additional compensation or time for performing the requested activities. If the Contractor commences performing work outside the scope of this Agreement and then ceases performing that work, the Contractor must, at the request of DHS, retract any out-of-scope work that would adversely affect this Agreement.

C. Subcontracts

The Contractor shall not assign this Agreement or subcontract this Agreement to other parties without obtaining prior written approval of the DHS Office of Contracts and Purchasing. DHS, as a condition of granting such approval, shall require that such assignees or subcontractors shall be subject to all conditions and provisions of this Agreement including Criminal Record and Central Registry background checks when applicable. The Contractor shall be responsible for the performance of all assignees or subcontractors.

If the Contractor is a subrecipient and creates a subrecipient through subcontracting, the Contractor must monitor the subcontractor to ensure compliance with federal requirements.

If subcontracting, the Contractor must obligate the subcontractors to maintain the confidentiality of DHS' client information in conformance with state and federal requirements. At DHS' request, any employee of the Contractor and of any subcontractor having access or continued access to DHS' confidential information may be required to execute an acknowledgment that the employee has been advised of the Contractor's and the subcontractor's obligations under this section and of the employee's obligation to DHS, the Contractor or subcontractor, as the case may be, to protect such confidential information from unauthorized use or disclosure.

D. Confidentiality

1. The Contractor and DHS each acknowledge that the other possesses and will continue to possess confidential information that has been developed or received by it. As used in this section, "confidential information" of the Contractor must mean all non-public proprietary information of the Contractor (other than confidential information of DHS as defined below) which is marked confidential, restricted, proprietary or with a similar designation. Confidential information of DHS must mean any information which is retained in confidence by DHS (or otherwise required to be held in confidence by DHS under applicable federal, state and local laws and regulations) or which, in the case of tangible materials provided to the Contractor by DHS under its performance under this Agreement, is marked

Contract Number: PAFC15-63011

as confidential, proprietary or with a similar designation by DHS. Confidential information includes information made privileged or confidential under federal and state laws and excludes any information (including this Agreement) that is publicly available under the Michigan Freedom Of Information Act.

2. DHS and the Contractor will each use at least the same degree of care to prevent disclosing to third parties the confidential information of the other as it employs to avoid unauthorized disclosure, publication or dissemination of its own confidential information of like character, but in no event less than reasonable care. Neither the Contractor nor DHS will (i) make any use of the confidential information of the other except as contemplated by this Agreement, (ii) acquire any right in or assert any lien against the confidential information of the other, or (iii) if requested to do so, refuse for any reason to promptly return the other party's confidential information to the other party. Each party will limit disclosure of the other party's confidential information to employees and subcontractors who must have access to fulfill the purposes of this Agreement. Disclosure to, and use by, a subcontractor is permissible where (A) use of a subcontractor is authorized under this Agreement, (B) the disclosure is necessary or otherwise naturally occurs in connection with work that is within the subcontractor's scope of responsibility, and (C) the Contractor obligates the subcontractor in a written contract to maintain DHS's confidential information in confidence. At DHS's request, any employee of the Contractor and of any subcontractor having access or continued access to DHS's confidential information may be required to execute an acknowledgement that the employee has been advised of the Contractor's and the subcontractor's obligations under this section and of the employee's obligation to the Contractor or subcontractor, as the case may be, to protect the confidential information from unauthorized use or disclosure.

Promptly upon termination or cancellation of this Agreement for any reason, the Contractor must certify to DHS that the Contractor has destroyed all DHS confidential information.

E. Compliance with Rules and Regulations

1. Compliance with Federal and State Requirements

The Contractor shall comply with all federal, state and local statutes, regulations and administrative rules, and any amendments thereto, as they may apply to the performance of this Agreement. This shall include, but shall not be limited to, those laws and regulations that could have a material effect on the federal program.

In addition, the Contractor shall comply with all federal grant agreements, provisions stated within the Catalog of Federal Domestic Assistance

Contract Number: PAFC15-63011

(CFDA), and state and federal laws and other rules and regulations related to this funding source that occur over the term of the Agreement.

The Contractor shall comply with all Federal Office of Management and Budget circulars that apply to the federal funding provided under this Agreement, which include but are not limited to:

- . A-122 for cost principles, Relocated to 2 CFR, Part 230
- . A-110 for administrative requirements, Relocated to 2 CFR, Part 215
- . A-133 for audit requirements
- . Special Federal Grant Provisions

The Contractor shall keep informed of federal, state, and local laws, ordinances, rules, regulations, orders, and decrees of bodies or tribunals having any jurisdiction/authority that in any manner affects those engaged in or employed on the work done under this Agreement or that in any manner affects the conduct of the work done under this Agreement.

2. Civil Service Rules and Regulations

The state of Michigan is obligated to comply with Article XI, Section 5, of the Michigan Constitution and applicable civil service rules and regulations. Other provisions of this Agreement notwithstanding, the state personnel director is authorized to disapprove contractual disbursements for personal services if the state personnel director determines that this Agreement violates Article XI, Section 5 of the Michigan Constitution or applicable civil service rules and regulations.

3. Compliance with Civil Rights, Other Laws

The Contractor shall not discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions, or privileges of employment, or a matter directly or indirectly related to employment, because of race, color, religion, national origin, age, sex, height, weight or marital status pursuant to Title VI and VII of the Civil Rights Act, 42 USC 2000d et seq., and the Elliott-Larsen Civil Rights Act, MCL 37.2101 et seq.

The Contractor shall also comply with the provisions of:

- . The Americans with Disabilities Act of 1990, 42 USC 12101 et seq.
- . The Michigan Persons with Disabilities Civil Rights Act, MCL 37.1101 et seq.
- . Section 504 of the Federal Rehabilitation Act of 1973, 29 USC 791 et seq., which states that no employee or client or otherwise qualified handicapped individual shall, solely by reason of this handicap, be

Contract Number: PAFC15-63011

excluded from participation, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

. HIPAA regulations at 42 CFR Part 160 and Part 164.

4. Freedom of Information Act

All information in this Agreement is subject to the provisions of the Freedom of Information Act. 1976 Public Act 442, as amended, MCL 15.231, et seq.

5. Prohibition Against Using Funds to Support Religious Activities

The Contractor shall not use financial funds administered by the state or federal government to support inherently religious activities, such as worship, religious instruction, or proselytization. If the Contractor engages in such activities, it must offer them separately, in time or location, from the programs or services funded with state or federal assistance, and participation must be voluntary for the beneficiaries of the state or federally funded programs or services.

The Contractor shall strictly adhere to provisions of federal law and regulation, including those found in 42 USC 604a.

F. Examination and Maintenance of Records

The Contractor shall permit DHS or any of its authorized agents access to the facilities being utilized at any reasonable time to observe the operation of the program. Further, the Contractor shall maintain/retain all books, records or other documents (electronic or otherwise) relevant to this Agreement at all times during the term of this Agreement and any extension of this Agreement and for three years after the later of the expiration date or final payment under this Agreement, at the Contractor's cost, and shall send copies of said books, records or other documents to DHS upon request. Federal auditors and any persons duly authorized by DHS shall have full access to and the right to examine and audit any of said material during said period. If an audit is initiated prior to the expiration of the three-year period after the later of the expiration date or final payment under this Agreement and extends past that period, all documents shall be maintained until the audit is completed. DHS shall provide findings and recommendations of audits to the Contractor. DHS shall adjust future payments or final payment if the findings of an audit indicate over payment to the Contractor in any period prior to the audit. If no payments are due and owing the Contractor, the Contractor shall refund all amounts which may be due DHS within 60 days notice by DHS. The Contractor shall assure, as a condition of any sale or transfer of ownership of the Contractor agency, that the new purchasers or owner maintains the above-described books, records or other documents for any unexpired portion of the term of this Agreement and three-year period after the later of the expiration date or final payment under this Agreement or the Contractor shall otherwise maintain said records as DHS may direct. If business

Contract Number: PAFC15-63011

operations cease, the Contractor shall maintain records as DHS may direct. The Contractor shall notify DHS when and if the Contractor operations cease during the three-year period after the later of the expiration date or final payment under this Agreement and provide for appropriate storage of records at the Contractor's expense.

The Contractor shall, as a provision of this Agreement, assure that DHS may make reasonable inquiries of the auditor relating to audit workpapers and, furthermore, that DHS may review the auditor's workpapers in support of the audit.

G. Reporting and Monitoring

1. Reporting

The Contractor shall comply with all program and fiscal reporting procedures as are or may hereinafter be established by DHS. The Contractor shall also comply with all reporting procedures established by DHS in completion of progress reports at time intervals, on forms, in formats, and by means specified by DHS. In particular, reports or billing documents denoting event dates shall record month, day and year as specified by DHS. In all electronic filings, four digits shall be used to designate year. Any additional reports as deemed necessary by DHS shall be made and submitted by the Contractor upon request.

2. Monitoring Requirements

DHS reserves the right to perform scheduled and unscheduled on-site visits during normal business hours, to monitor the Contractor's activities under this Agreement at any time, either during the term, or within three years after termination of the Agreement. The Contractor shall cooperate with DHS during the monitoring process by making available all records, facilities, and other resources necessary to perform the review.

If DHS detects noncompliance with this Agreement, and/or questioned costs during the course of its review, these items shall be identified and conveyed to the Contractor in an exit conference. DHS shall provide the Contractor with a detailed written report of these findings within 60 days of the exit conference. The Contractor is required to address each item in DHS' report by providing a Corrective Action Plan (CAP) to eliminate or correct each issue of noncompliance. The Contractor shall submit the CAP to DHS within 60 days from issuance of DHS' report.

If DHS identifies questioned costs that cannot be substantiated, DHS may, at its discretion, and after consultation with the Contractor, require the Contractor to submit a revised "Statement of Expenditures" to reflect adjustment for disallowed costs. Submission of revised billings to DHS shall be made within a time schedule established by DHS and the Contractor. If the Contractor fails to comply with monitoring requirements as set forth in

Contract Number: PAFC15-63011

this Agreement, and within allotted time frames mutually established, DHS may, at its discretion, invoke sanctions on the Contractor, which may include, but are not limited to, actions to collect disallowed costs and/or cancellation of the Agreements.

3. Audit Reports that Contain a Going Concern Statement

If an audit firm conducts an audit of the Contractor and issues an audit report with a finding of a Going Concern, the Contractor must submit this audit report to the DHS Office of Monitoring and Internal Controls within 10 days from the date of the audit report. The submission of this audit report to DHS is required regardless of whether an audit is required under this Agreement.

A Contractor receiving a Going Concern must submit a financial plan to the DHS Office of Monitoring and Internal Controls no later than 25 days from the date of the audit report issued by the audit firm. The financial plan must be approved by DHS. Failure of the Contractor to either timely submit the audit report with the Going Concern, or timely submit a financial plan, or DHS' rejection of the Contractor's financial plan, are grounds for immediately terminating this Agreement.

Mailing address for all audit information:

Michigan Department of Human Services
Office of Monitoring and Internal Controls
Grand Tower, Suite 1112
PO Box 30037
Lansing, MI 48909

H. Fees and Other Sources of Funding

The Contractor guarantees that any claims made to DHS under this Agreement shall not be financed by any source other than DHS under the terms of this Agreement. If funding is received through any other source, the Contractor agrees to deduct from the amount billed to DHS the greater of either the fee amounts, or the actual costs of the services provided.

The Contractor may not accept reimbursement from a client unless the Agreement specifically authorizes such reimbursement in the "Contractor Responsibility" section. In such case, a detailed fee scale and criteria for charging the fee must be included. If the Contractor accepts reimbursement from a client in accordance with the terms of the Agreement, the Contractor shall deduct these fees from billings to DHS.

Other third party funding sources, e.g., insurance companies, may be billed for contracted client services. Third party reimbursement shall be considered payment in full unless the third party fund source requires a co-pay, in which case

Contract Number: PAFC15-63011

DHS may be billed for the amount of the co-pay. No supplemental billing is allowed.

I. Publication - Approval and Copyright

The state of Michigan shall have copyright, property and publication rights in all written or visual material or other work products developed in connection with this Agreement. The Contractor shall not publish or distribute any printed or visual material relating to the services provided under this Agreement without prior written permission of the state of Michigan.

If the Contractor or an agent of the Contractor creates and/or reproduces under this Agreement materials which are developed for consumption by the general public or as a general information tool and which are funded in whole or in part with state of Michigan funds, the Contractor or its agent must include one of the statements referenced below, as they apply:

- . This program is funded by the state of Michigan

OR

- . This program is funded in part by the state of Michigan

News releases (including promotional literature and commercial advertisements) pertaining to this Agreement shall not be made without prior written DHS approval, and then only in accordance with the explicit written instructions from DHS. No results of the activities associated with the Agreement are to be released without prior written approval of DHS and then only to persons designated.

J. Agreement Inclusiveness

This Agreement contains all the terms and conditions agreed upon by the parties. No other understanding, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

K. Certifications Regarding Lobbying

As required by section 1352, Title 31 of the U.S. Code, and implemented at 28 CFR Part 69, for persons entering into a grant or cooperative agreement over \$100,000, as defined at 28 CFR Part 69, the Contractor certifies to the best of its knowledge that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any persons influencing or attempting to influence an officer or employee of an department, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the making of any federal grant, the entering

Contract Number: PAFC15-63011

into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.

2. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any department, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal grant or cooperative agreement, the undersigned shall complete and submit Standard form – LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, contracts under grants and cooperative agreements, and subcontracts) and that all sub-recipients shall certify and disclose accordingly.

L. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The Contractor certifies to the best of its knowledge that they and their principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of federal benefits by a state or federal court, or voluntarily excluded from covered transactions by any federal or state department or agency.
2. Have not within a three-year period preceding this Agreement been convicted of or had civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in 28 CFR 67, et sec.
4. Have not within a three-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause and default.

Where the parties are unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this Agreement.

Contract Number: PAFC15-63011

The Contractor shall promptly notify DHS of any criminal litigation, investigations or proceeding which may have arisen or may arise involving the Contractor or any of the Contractor's subcontractors, or any of the foregoing entities' then current officers or directors during the term of this Agreement and three years thereafter. All notices shall be provided in writing to DHS within 15 business days after the Contractor learns about any such criminal or civil investigations and within 15 days after the commencement of any proceeding, litigation, or arbitration, as otherwise applicable. Details of settlements, which are prevented from disclosure by the terms of the settlement, shall be annotated as such. However, the Contractor shall disclose if any terms of such settlement would impede the Contractor's performance of this Agreement. The Contractor may rely on similar good faith certifications of its subcontractors, which certification shall be available for inspection at the option of DHS.

The Contractor certifies to the best of its knowledge that within the past three years, the Contractor has not;

1. Failed to substantially perform a state contract, agreement, or subcontract according to its terms, conditions, and specifications within specified time limits.
2. Refused to provide information or documents required by a contract or agreement including, but not limited to information or documents necessary for monitoring contract performance.
3. Failed to respond to requests for information regarding contract or agreement compliance, or accumulated repeated substantiated complaints regarding performance of a contract or agreement.
4. Failed to perform a state contract, agreement, or subcontract in a manner consistent with any applicable state or federal law, rule, regulation, order, or decree.

The Contractor shall include Section L. (Certification Regarding Debarment, Suspension, and Other Responsibility Matters) language as written above in all subcontracts with other parties.

The Contractor shall require each primary subcontractor, whose subcontract will exceed \$25,000, to disclose to the Contractor, in writing, whether at of the time of the award of the subcontract, the subcontractor, or its principals, is or is not debarred, suspended, or proposed for debarment by the state of Michigan. The Contractor shall then inform DHS of the subcontractor's status and reasons for the Contractor's decision to use such subcontractor, if the Contractor so decides.

If it is determined that the Contractor knowingly rendered an erroneous certification under this provision, in addition to the other remedies available to the state, DHS may immediately terminate this Agreement.

Contract Number: PAFC15-63011

If the state finds that grounds to debar exist, it shall send notice to the Contractor of proposed debarment indicating the grounds for proposed debarment and the procedures for requesting a hearing. If the Contractor does not respond with a written request for a hearing within 20 calendar days, the state shall issue the decision to debar without a hearing. The debarment period may be of any length up to eight years. After the debarment period expires, the Contractor may reapply for inclusion on bidder lists through the regular application process by authority of Executive Order 2003-1.

M. Governing Law

This Agreement shall in all respects be governed by, and construed according to, the substantive laws of the state of Michigan without regard to any Michigan choice of law rules that would apply the substantive law of any other jurisdiction to the extent not inconsistent with, or pre-empted by federal law.

Any dispute arising from this Agreement shall be resolved in the state of Michigan and the Contractor expressly consents to personal jurisdiction in Michigan. With respect to any claim between the parties, the Contractor consents to venue in Ingham County, Michigan, and irrevocably waives any objections to this venue. Contractor agrees to appoint agents in the State of Michigan of Michigan to receive service of process.

N. Severability

Each provision of this Agreement shall be deemed to be severable from all other provisions of this Agreement and, if one or more of the provisions of this Agreement shall be declared invalid, the remaining provisions of this Agreement shall remain in full force and effect.

O. Reporting of Retiree Employment

All other provisions of this Agreement notwithstanding, the Contractor shall provide written notification within 15 days of hiring to DHS Office of Human Resources (HR) the name, social security number, and work site of any state of Michigan retiree under their employ. Failure to notify HR within the allotted time period may result in the disallowance of all costs related to this Agreement up to the time the proper notification is received by HR.

P. Disputes

The Contractor shall notify DHS in writing of intent to pursue a claim against DHS for breach of any terms of this Agreement. No suit may be commenced by the Contractor for breach of this Agreement prior to the expiration of 90 days from the date of such notification. Within this 90 day period, the Contractor, at the request of DHS, must meet with the Director of DHS or designee for the purpose of attempting resolution of the dispute.

Contract Number: PAFC15-63011

Q. Termination/Cancellation

1. Notice and Right to Cure

If the Contractor breaches this Agreement, and DHS, in its sole discretion, determines that the breach is curable, then DHS must provide the Contractor with written notice of the breach and a time period (not less than 30 days) to cure the breach. The notice of breach and opportunity to cure is inapplicable for successive or repeated breaches or if DHS determines, in its sole discretion, that the breach poses a serious and imminent threat to the health and safety of any person or the imminent loss, damage, or destruction of any real or tangible personal property.

2. Termination for Cause

DHS may terminate this Agreement, for cause, by notifying the Contractor in writing, if the Contractor (a) breaches any of its material duties or obligations under this Agreement, or (b) fails to cure a breach within the time period specified in the written notice of breach provided by DHS.

If this Agreement is terminated for cause, the Contractor must pay all costs incurred by DHS in terminating this Agreement, including but not limited to, state administrative costs, reasonable attorneys' fees and court costs, and any reasonable additional costs DHS may incur to procure the services/deliverables required by this Agreement from other sources.

3. Termination for Convenience

DHS may terminate this Agreement for its convenience, in whole or part, if DHS determines that a termination is in DHS's best interest. Reasons for the termination must be left to the sole discretion of DHS and may include, but not necessarily be limited to (a) DHS no longer needs the services or products specified in this Agreement, (b) relocation of office, program changes, changes in laws, rules, or regulations make implementation of the services no longer practical or feasible, (c) unacceptable prices for additional services or new work requested by DHS, or (d) falsification or misrepresentation, by inclusion or non-inclusion, of information material to a response to any RFP issued by DHS. DHS may terminate this Agreement for its convenience, in whole or in part, by giving Contractor written notice at least 30 days before the date of termination.

4. Termination for Non-Appropriation

- a. Contractor acknowledges that, if this Agreement extends for several fiscal years, continuation of this Agreement is subject to appropriation or availability of funds for this Agreement. If funds to enable DHS to effect continued payment under this Agreement are not appropriated or otherwise made available, DHS must terminate this Agreement and

Contract Number: PAFC15-63011

all affected statements of work, in whole or in part, at the end of the last period for which funds have been appropriated or otherwise made available by giving written notice of termination to Contractor. DHS must give Contractor at least 30 days advance written notice of termination for non-appropriation or unavailability (or the time as is available if DHS receives notice of the final decision less than 30 days before the funding cutoff).

- b. If funding for this Agreement is reduced by law, or funds to pay Contractor for the agreed-to level of the services or production of deliverables to be provided by Contractor are not appropriated or otherwise unavailable, DHS may, upon 30 days notice to Contractor, reduce the level of the services or change the production of deliverables in the manner and for the periods of time as DHS may elect. The charges payable under this Agreement will be equitably adjusted to reflect any equipment, services or commodities not provided by reason of the reduction.
- c. If DHS terminates this Agreement, eliminates certain deliverables, or reduces the level of services to be provided by Contractor under this section, DHS will pay Contractor for all work-in-process performed through the effective date of the termination or reduction in level, as the case may be and as determined by DHS, to the extent funds are available.

5. Termination for Criminal Conviction

DHS may terminate this Agreement immediately and without further liability or penalty in the event Contractor, an officer of Contractor, or an owner of a 25% or greater share of Contractor is convicted of a criminal offense related to a state, public or private contract, agreement, or subcontract.

6. Rights and Obligations upon Termination

- a. If DHS terminates this Agreement for any reason, the Contractor must stop all work as specified in the notice of termination, and take any action to mitigate and limit any potential damages, or requests for Contractor adjustment or termination settlement costs, to the maximum practical extent, including terminating or limiting as otherwise applicable those subcontracts and outstanding orders for material and supplies resulting from the terminated Agreement.
- b. If DHS terminates this Agreement before its expiration for its own convenience, DHS must pay Contractor for all charges due for services provided before the date of termination and, if applicable, as a separate item of payment under this Agreement, for work in process, on a percentage of completion basis at the level of completion determined by DHS. All completed or partially completed

Contract Number: PAFC15-63011

deliverables prepared by Contractor under this Agreement, at the option of DHS, becomes DHS's property, and Contractor is entitled to receive equitable fair compensation for the deliverables. Regardless of the basis for the termination, DHS is not obligated to pay, or otherwise compensate, Contractor for any lost expected future profits, costs or expenses incurred with respect to services not actually performed for DHS.

- c. Upon a good faith termination, DHS may assume, at its option, any subcontracts and agreements for services and deliverables provided under this Agreement, and may further pursue completion of the services/deliverables under this Agreement by replacement contract or otherwise as DHS may in its sole judgment deem expedient.

7. Reservation of Rights

Any termination of this Agreement or any statement of work issued under it by a party must be with full reservation of, and without prejudice to, any rights or remedies otherwise available to the party with respect to any claims arising before or as a result of the termination.

8. Termination by Contractor

- a. The Contractor may terminate this Agreement upon 30 days written notice to DHS at any time prior to the completion of the Agreement period.
- b. If DHS breaches this Agreement, and the Contractor in its sole discretion determines that the breach is curable, then the Contractor will provide DHS with written notice of the breach and a time period (not less than 30 days) to cure the breach. The notice of breach and opportunity to cure is inapplicable for successive and repeated breaches.

The Contractor may terminate this Agreement if DHS (a) materially breaches its obligation to pay the Contractor undisputed amounts due and owing under the Agreement, (b) breaches its other obligations under the Agreement to an extent that makes it impossible or commercially impracticable for the Contractor to perform the services, or (c) does not cure the breach within the time period specified in a written notice of breach. But the Contractor must discharge its obligations under Section III. P. Disputes before it terminates the Agreement.

R. Transition Responsibilities

If DHS terminates this Agreement, for convenience or cause, or if this Agreement is otherwise dissolved, voided, rescinded, nullified, expires or rendered unenforceable, the Contractor agrees to comply with direction provided by DHS to assist in the orderly transition of equipment, services, software, leases, etc. to

Contract Number: PAFC15-63011

DHS or a third party designated by DHS. If this Agreement expires or terminates, the Contractor agrees to make all reasonable efforts to effect an orderly transition of services within a reasonable period of time.

The Contractor must work with DHS, or a specified third party, to develop a transition plan setting forth the specific tasks and schedule to be accomplished by the parties to effect an orderly transition. The Contractor must allow as many personnel as practicable to remain on the job to help DHS, or a specified third party, maintain the continuity and consistency of the services required by this Agreement.

The Contractor must deliver to DHS any remaining owed reports and documentation still in Contractor's possession subject to appropriate payment by DHS.

If the transition results from a termination for any reason, reimbursement must be governed by the termination provisions of this Agreement.

S. Stop Work

1. Stop Work Orders

DHS may, at any time, by written stop work order to the Contractor, require that the Contractor stop all, or any part, of the work called for by this Agreement for a period of up to 90 calendar days after the stop work order is delivered to the Contractor, and for any further period to which the parties may agree. The stop work order shall be specifically identified as such and shall indicate that it is issued under this section of the Agreement. Upon receipt of the stop work order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage. Within the period of the stop work order, DHS may either: (a) cancel the stop work order; or (b) terminate the work covered by the stop work order as provided in Section III. Q. Termination/Cancellation.

2. Cancellation or Expiration of Stop Work Order

If a stop work order issued under this section of the Agreement is canceled or the period of the stop work order or any extension thereof expires, the Contractor shall resume work. The parties shall agree upon an equitable adjustment in the services to be delivered, the Agreement price, or both, and the Agreement shall be modified, in writing, accordingly, if: (a) the stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Agreement; and (b) the Contractor asserts its right to an equitable adjustment within 30 calendar days after the end of the period of work stoppage, provided that, if DHS decides the facts justify the action, DHS may receive and act upon a Contractor proposal submitted at any time

Contract Number: PAFC15-63011

before final payment under the Agreement. Any adjustment must conform to the requirements of Section III. B. Amendment.

T. Closeout Responsibilities

1. Closeout

When this Agreement is concluded or terminated, for any reason, the Contractor shall provide DHS, within 30 days of conclusion or termination, with all financial, performance and other reports required as a condition of this Agreement. DHS shall within the limit of this Agreement reimburse the Contractor for allowable costs not previously reimbursed. The Contractor shall immediately refund to DHS any payments or funds advanced to the Contractor in excess of allowable reimbursable expenditures.

2. Fixed Assets

DHS reserves the right to obtain or transfer title to all fixed assets, real or personal, included in the approved budget of this Agreement, billed in full or in part to DHS by the Contractor. Fixed asset costs billed to DHS shall be limited to straight-line determination or a use charge pre-approved by DHS and shall be used only for the performance of the Agreement unless another use is authorized in writing by DHS.

At least 60 days prior to the end date of this Agreement (which includes cancellation of the Agreement) the Contractor shall report to DHS the book value of all fixed assets and non-consumables purchased with DHS funds and not fully utilized by the end of the Agreement. The Contractor shall request written instructions regarding the disposal of these fixed assets and consumable and/or non-consumable supplies that have been acquired with funds under this Agreement. Any gain on the sale or disposition of fixed assets before completion of this Agreement must be immediately reported and refunded to DHS.

No disposal, sale or transfer of fixed assets purchased under this Agreement in whole or part, may occur without the express written consent of DHS.

3. Continuing Responsibilities

Termination, conclusion, or cancellation of this Agreement shall not be construed as terminating the ongoing responsibilities of the Contractor or rights of DHS contained in Section III, "Examination and Maintenance of Records" and Section III, "Closeout" of this Agreement.

U. Recoupment of Funding and Repayment of Debts.

1. Recoupment of Funding

Contract Number: PAFC15-63011

If the Contractor fails to comply with requirements as set forth in this Agreement, or fails to submit a revised "Statement of Expenditures" within allotted time frames established by DHS in consultation with the Contractor, DHS may, at its discretion, recoup or require the Contractor to reimburse payments made under this Agreement which DHS has determined that the Contractor has been overpaid. The Contractor is liable for any cost incurred by DHS in the recoupment of any funding.

Upon notification by DHS that repayment is required, the Contractor shall make payment directly to DHS within 30 days or DHS may withhold current or future payments made under this or any other agreements, current or future, between DHS and the Contractor.

If the Contractor fails to: (1) correct noncompliance activities identified by DHS, (2) submit revised billings as requested as part of a Corrective Action Plan when required; or (3) remit overpayments or make arrangements to have the overpayments deducted from future payments within 30 days, such failure shall constitute grounds to terminate immediately any or all of DHS' agreements with the Contractor. DHS shall also report noncompliance of the Contractor to Michigan's Department of Technology, Management and Budget. Such report may result in the Contractor's debarment from further contracts with the state of Michigan.

2. Repayment of Debts and Other Amounts due DHS

By entering into this Agreement, the Contractor agrees to honor all prior repayment agreements established by DHS with the Contractor or Contractor's predecessors. If the Contractor has an outstanding debt due to DHS but does not have a repayment agreement, the Contractor agrees to make monthly payments to DHS at an amount not less than 5% of any outstanding balance and to begin on the date this Agreement is executed.

If the Contractor fails to honor prior repayment agreements, or the Contractor fails to begin repayment on an obligation due DHS that is not subject to a repayment agreement, DHS will initiate the administrative process to reduce payments to the Contractor under this Agreement to recoup the debt. The payment reduction will be made at the amount originally established in the repayment agreement or at an amount not less than 5% of any outstanding balance effective on the date this Agreement is executed.

V. Insurance Coverage

The Contractor must provide proof that it has obtained the minimum levels of insurance coverage indicated or required by law, whichever is greater. The insurance must protect DHS from claims which may arise out of, or result from, or are alleged to arise out of, or result from, the Contractor's performance of services under the terms of this Agreement, whether the services are performed by the

Contract Number: PAFC15-63011

Contractor, or by any subcontractor, or by anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable.

The Contractor waives all rights against DHS, its departments, divisions, agencies, offices, commissions, officers, employees and agents for the recovery of damages that are covered by the insurance policies the Contractor is required to maintain under this Agreement. The Contractor's failure to obtain and maintain the required insurance will not limit this waiver.

All insurance coverage provided relative to this Agreement is primary and non-contributing to any comparable liability insurance (including self-insurance) carried by the state.

DHS, in its sole discretion, may approve the use of a fully-funded self-insurance program in place of any specified insurance identified in this Agreement.

Unless DHS approves otherwise, the insurers selected by the Contractor must have an A.M. Best rating of A or better and a financial size of VII or better, or if those ratings are not available, a comparable rating from an insurance rating agency approved by DHS. All policies of insurance required in this Agreement must be issued by companies that have been approved to do business in the state. See www.michigan.gov/lara.

Where specific limits are shown, they are the minimum acceptable limits. If the Contractor's policy contains higher limits, DHS must be entitled to coverage to the extent of the higher limits.

The Contractor must maintain all required insurance coverage throughout the term of this Agreement and any extensions. However, in the case of claims-made Commercial General Liability policies, the Contractor must secure tail coverage for at least three years following the termination of this Agreement.

The Contractor must provide, within five business days, written notice to the director of the Office of Contracts and Purchasing (OCP) if any policy required under this Agreement is cancelled. The notice must include the applicable agreement number.

The minimum limits of coverage specified are not intended, and may not be construed, to limit any liability or indemnity of the Contractor to any indemnified party or other persons.

The Contractor is responsible for the payment of all deductibles.

If the Contractor fails to pay any premium for a required insurance policy, or if any insurer cancels or significantly reduces any required insurance without DHS's approval, DHS may, after giving the Contractor at least 30 days' notice, pay the premium or procure similar insurance coverage from another company or

Contract Number: PAFC15-63011

companies. DHS may deduct any part of the cost from any payment due the Contractor, or require the Contractor to pay that cost upon demand.

In the event DHS approves the representation of DHS by the insurer's attorney, the attorney may be required to be designated as a Special Assistant Attorney General by the Michigan Attorney General.

The Contractor is required to pay for and provide the following types and amounts of insurance:

1. Commercial General Liability with the following minimum coverage:

\$2,000,000	General Aggregate Limit other than Products/Completed Operations
\$2,000,000	Products/Completed Operations Aggregate Limit
\$1,000,000	Personal & Advertising Injury Limit
\$1,000,000	Each Occurrence Limit

Deductible maximum: \$50,000 Each Occurrence

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees and agents as additional insureds on the Commercial General Liability certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

2. Motor vehicle insurance with the following minimum coverage:

\$1,000,000 Per Occurrence

3. The Contractor must provide Workers' Compensation coverage according to applicable laws governing work activities in the state of the Contractor's domicile. If the applicable coverage is provided by a self-insurer, the Contractor must provide proof of an approved self-insured authority by the jurisdiction of domicile. For employees working outside of the state of the Contractor's domicile, the Contractor must provide certificates of insurance proving mandated coverage levels for the jurisdictions where the employees' activities occur.

The Contractor must provide the applicable certificates of insurance and a list of states where the coverage is applicable. Contractor must provide proof that the Workers' Compensation insurance policies contain a waiver of subrogation by the insurance company, except where such a provision is prohibited or limited by the laws of the jurisdiction in which the work is to be performed.

Contract Number: PAFC15-63011

4. Cyber Liability insurance covering information security and privacy liability, privacy notification costs, regulatory defense and penalties, and website media content liability.

Minimal Limits:

\$1,000,000 Each Occurrence

\$1,000,000 Annual Aggregate

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate.

5. Employers liability insurance with the following minimum limits:

\$100,000 each incident

\$100,000 each employee by disease

\$500,000 aggregate disease

6. Umbrella or Excess Liability Insurance in a minimum amount of four million dollars (\$4,000,000.00), which must apply, at a minimum, to the insurance required in Subsection 1 (Commercial General Liability) above.

The Contractor must list the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents as additional insureds on the certificate. The Contractor also agrees to provide evidence that insurance policies contain a waiver of subrogation by the insurance company.

7. Professional Liability (Errors and Omissions) Insurance with the following minimum coverage: \$1,000,000.00 each occurrence and \$1,000,000.00 annual aggregate.

Deductible maximum: \$50,000 Per Loss

8. Hired and Non-Owned Motor Vehicle Insurance

Contractor must have their policy: (1) endorsed to add "the State of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents" as additional insureds, and (2) include a waiver of subrogation.

Minimal Limits:

\$1,000,000 Per Accident

Subcontractor Insurance Coverage

Except where DHS has approved a subcontract with other insurance provisions, the Contractor must require any subcontractor under this Agreement to purchase

Contract Number: PAFC15-63011

and maintain the insurance coverage as described in this section for the Contractor in connection with the performance of work by those subcontractors. Alternatively, the Contractor may include any subcontractors under the Contractor's insurance on the coverage required in this section. Failure of subcontractors to comply with insurance requirements does not limit the Contractor's liability or responsibility.

Certificates of Insurance and Other Requirements

Before this Agreement is signed, and not less than 20 days before the insurance expiration date every year thereafter, the Contractor must provide evidence that the state of Michigan, its departments, divisions, agencies, offices, commissions, officers, employees, and agents are listed as additional insureds as required. The Contractor must provide OCP with all applicable certificates of insurance verifying insurance coverage or providing, if approved, satisfactory evidence of self-insurance as required in this section. Each certificate must be on the standard ACORD form or equivalent. The agreement number must be shown on the certificate of insurance to assure correct filing.

W. Indemnification

1. General Indemnification

The Contractor must indemnify, defend and hold harmless DHS from liability, including all claims and losses, and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties), accruing or resulting to any person, firm or corporation that may be injured or damaged by the Contractor in the performance of this Agreement and that are attributable to the negligence or tortious acts of the Contractor or any of its subcontractors, or by anyone else for whose acts any of them may be liable.

2. Code Indemnification

The Contractor must indemnify, defend and hold harmless DHS from any claim, loss, or expense arising from Contractor's breach of the No Surreptitious Code Warranty.

3. Employee Indemnification

In any claims against the state of Michigan, its departments, divisions, agencies, sections, commissions, officers, employees and agents, by any employee of the Contractor or any of its subcontractors, the indemnification obligation under this Agreement must not be limited in any way by the amount or type of damages, compensation or benefits payable by or for the Contractor or any of its subcontractors under worker's disability compensation acts, disability benefit acts or other employee benefit acts. This indemnification clause is intended to be comprehensive. Any overlap

Contract Number: PAFC15-63011

in provisions, or the fact that greater specificity is provided as to some categories of risk, is not intended to limit the scope of indemnification under any other provisions.

4. Patent/Copyright Infringement Indemnification

The Contractor must indemnify, defend and hold harmless DHS from and against all losses, liabilities, damages (including taxes), and all related costs and expenses (including reasonable attorneys' fees and costs of investigation, litigation, settlement, judgments, interest and penalties) incurred in connection with any action or proceeding threatened or brought against DHS to the extent that the action or proceeding is based on a claim that any piece of equipment, software, commodity or service supplied by the Contractor or its subcontractors, or the operation of the equipment, software, commodity or service, or the use or reproduction of any documentation provided with the equipment, software, commodity or service infringes any United States patent, copyright, trademark or trade secret of any person or entity, which is enforceable under the laws of the United States.

In addition, should the equipment, software, commodity, or service, or its operation, become or in DHS's or Contractor's opinion be likely to become the subject of a claim of infringement, the Contractor must at the Contractor's sole expense (i) procure for DHS the right to continue using the equipment, software, commodity or service or, if the option is not reasonably available to the Contractor, (ii) replace or modify to DHS's satisfaction the same with equipment, software, commodity or service of equivalent function and performance so that it becomes non-infringing, or, if the option is not reasonably available to Contractor, (iii) accept its return by DHS with appropriate credits to DHS against the Contractor's charges and reimburse DHS for any losses or costs incurred as a consequence of DHS ceasing its use and returning it.

Notwithstanding the foregoing, the Contractor has no obligation to indemnify or defend DHS for, or to pay any costs, damages or attorneys' fees related to, any claim based upon (i) equipment developed based on written specifications of DHS; (ii) use of the equipment in a configuration other than implemented or approved in writing by the Contractor, including, but not limited to, any modification of the equipment by DHS; or (iii) the combination, operation, or use of the equipment with equipment or software not supplied by the Contractor under this Agreement.

5. Continuation of Indemnification Obligations

The Contractor's duty to indemnify under this section continues in full force and effect, notwithstanding the expiration or early termination of this Agreement, with respect to any claims based on facts or conditions that occurred before expiration or termination.

Contract Number: PAFC15-63011

6. Indemnification Procedures

The procedures set forth below must apply to all indemnity obligations under this Agreement.

- a. After DHS receives notice of the action or proceeding involving a claim for which it will seek indemnification, DHS must promptly notify Contractor of the claim in writing and take or assist Contractor in taking, as the case may be, any reasonable action to avoid the imposition of a default judgment against Contractor. No failure to notify the Contractor relieves the Contractor of its indemnification obligations except to the extent that the Contractor can prove damages attributable to the failure. Within 10 days following receipt of written notice from DHS relating to any claim, the Contractor must notify DHS in writing whether Contractor agrees to assume control of the defense and settlement of that claim (a "Notice of Election"). After notifying Contractor of a claim and before DHS receiving Contractor's Notice of Election, DHS is entitled to defend against the claim, at the Contractor's expense, and the Contractor will be responsible for any reasonable costs incurred by DHS in defending against the claim during that period.
- b. If Contractor delivers a Notice of Election relating to any claim: (i) DHS is entitled to participate in the defense of the claim and to employ counsel at its own expense to assist in the handling of the claim and to monitor and advise DHS about the status and progress of the defense; (ii) the Contractor must, at the request of DHS, demonstrate to the reasonable satisfaction of DHS, the Contractor's financial ability to carry out its defense and indemnity obligations under this Agreement; (iii) the Contractor must periodically advise DHS about the status and progress of the defense and must obtain the prior written approval of DHS before entering into any settlement of the claim or ceasing to defend against the claim and (iv) to the extent that any principles of Michigan governmental or public law may be involved or challenged, DHS has the right, at its own expense, to control the defense of that portion of the claim involving the principles of Michigan governmental or public law. But DHS may retain control of the defense and settlement of a claim by notifying the Contractor in writing within 10 days after DHS's receipt of Contractor's information requested by DHS under clause (ii) of this paragraph if DHS determines that the Contractor has failed to demonstrate to the reasonable satisfaction of DHS the Contractor's financial ability to carry out its defense and indemnity obligations under this section. Any litigation activity on behalf of DHS, or any of its subdivisions under this section, must be coordinated with the Department of Attorney General. In the event the insurer's attorney represents DHS under this section, the insurer's attorney may be required to be designated

Contract Number: PAFC15-63011

as a Special Assistant Attorney General by the Michigan Attorney General.

- c. If Contractor does not deliver a Notice of Election relating to any claim of which it is notified by DHS as provided above, DHS may defend the claim in the manner as it may deem appropriate, at the cost and expense of Contractor. If it is determined that the claim was one against which Contractor was required to indemnify DHS, upon request of DHS, Contractor must promptly reimburse DHS for all the reasonable costs and expenses, including attorney fees.

X. Limitation of Liability

Neither the Contractor nor DHS is liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages. This limitation of liability does not apply to claims for infringement of United States patent, copyright, trademark or trade secrets; to claims for personal injury or damage to property caused by the gross negligence or willful misconduct of the Contractor; to claims covered by other specific provisions of this Agreement calling for liquidated damages; or to court costs or attorneys' fees awarded by a court in addition to damages after litigation based on this Agreement.

EXHIBIT 6

AGREEMENT NUMBER: PAFC15-63011

AMENDMENT NUMBER: 4

Between

THE STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

And



CONTRACTOR	Bethany Christian Services
CONTRACTOR ADDRESS	901 Eastern Avenue, NE, PO Box 294, Grand Rapids, Michigan 49501-0294
CONTRACTOR EMAIL	lgalien@bethany.org

CONTRACT ADMINISTRATOR	EMAIL
Sarah Goad	goads@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Placing Agency Foster Care		
GEOGRAPHIC AREA	Statewide		
INITIAL EFFECTIVE DATE	October 1, 2014	CURRENT EXPIRATION DATE	September 30, 2017
CURRENT AGREEMENT VALUE	\$4,290,000.00		
AGREEMENT TYPE	Unit Rate/Per Diem		

AMENDMENT DESCRIPTION			
EXTEND EXPIRATION DATE	☐ YES	☒ NO	NEW EXPIRATION DATE N/A
AMENDMENT AMOUNT	ESTIMATED REVISED AGGREGATE AGREEMENT VALUE		
\$	☐ INCREASE	☐ DECREASE	\$4,290,000.00
NATURE OF CHANGE	This amendment will change language in the contract, and increase the per diem rate.		

The undersigned have the lawful authority to bind the Contractor and the Michigan Department of Health and Human Services (MDHHS) to the terms set forth in this Agreement.

FOR THE CONTRACTOR:

Bethany Christian Services

Contractor

Signature of Director or Authorized Designee

Brian DeVos, Senior VP, Child & Family Services

Print Name

Date

11-2-16

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

Signature of Director or Authorized Designee

Kim Stephen

Print Name

Date

11/29/2016

Agreement Number: PAFC15-63011

Amendment Number: 4

	<u>Agreement Period</u>	<u>Amount</u>
Year 1	October 1, 2014 through September 30, 2015	\$1,430,000.00
Year 2	October 1, 2015 through September 30, 2016	\$1,430,000.00
Year 3	October 1, 2016 through September 30, 2017	\$1,430,000.00
Total Amount:		\$4,290,000.00

Check all agreement years affected by this amendment: ☐ Year 1 ☐ Year 2 ☒ Year 3 ☐ Year 4 ☐ Year 5 ☐ Year 6

**STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES**

WHEREAS, the Michigan Department of Health and Human Services (hereinafter referred to as "MDHHS") entered into a contractual Agreement effective October 1, 2014, with Bethany Christian Services (hereinafter referred to as "Contractor"), having a mailing address of 901 Eastern Avenue, NE, PO Box 294, Grand Rapids, Michigan 49501-0294, for the provision of certain services as set forth therein; and,

WHEREAS, it is mutually desirable to MDHHS and to the Contractor to amend the aforesaid Agreement.

THEREFORE, in consideration of the promises and mutual covenants hereinabove and hereinafter contained, the parties hereto agree to the following amendment of said Agreement. This amendment shall be attached to the Agreement, said Agreement being hereby reaffirmed and made a part hereof.

Article I

This amendment shall be effective on the date of MDHHS signature or November 1, 2016, whichever is later. Rates established in Article III, Section 3, 3.1, b., shall be effective on October 1, 2016.

Article II

In Section 2., CONTRACTOR RESPONSIBILITIES, Item 2.9., Compliance Requirements, a., b., f., g., k., and Additional Compliance Provisions; Item 2.10 Services to be Provided, d., Staff Training; Item 2.11 Expected Program Performance; and Item 2.16 Private Agency MiSACWIS shall be amended and Item 2.23 Criminal Background Check, shall be added as follows:

2.9. Compliance Requirements

Agreement Number: PAFC15-63011
Amendment Number: 4

Except in subsection (h), the Contractor shall comply with the following requirements:

- a. The Contractor shall comply with all applicable MDHHS policy in the Children's Foster Care (FOM), Guardianship (GDM), Confidentiality (SRM 131), Fingerprints (SRM 200), Interstate Compact (ICM), and Adoption (ADM) Manuals and MDHHS policy amendments (including interim policy bulletins).
- b. Throughout the term of this Agreement, the Contractor shall ensure that it provides all applicable MDHHS policy and MDHHS policy amendments (including interim policy bulletins) and applicable Administrative Codes to social service staff. The Contractor shall ensure that social service staff complies with all applicable requirements.

MDHHS policies, amendments and policy bulletins, are published on the following internet link: <http://www.michigan.gov/mdhhs>. Administrative Codes are published at on the following internet link: http://michigan.gov/lara/0,4601,7-154-35738_5698-118524--,00.html

- f. The Contractor shall ensure worker participation in the department's federally-required Random Moment Time Study (RMTS) in order to determine the amount of time spent on various activities. Based on these results, MDHHS determines the amount of worker time that can be charged to various funding sources. Failure to ensure workers meet RMTS training requirements and provide timely and accurate RMTS survey responses may result in recoupment of funding or other corrective actions, as set forth in this Agreement.
- g. The Contractor shall assure the coordination of all services based on an assessment of the parent's needs. The Contractor shall utilize Care Connect 360 (CC360) to assure the coordination and provision of all treatment services required based on an assessment of each child's needs and shall execute and comply with the terms of the CC360 Data Use Agreement. Treatment services include, but are not limited to the provision of counseling/therapy for each child. The Contractor shall ensure the provision of all medical, dental and behavioral health services required based on an assessment of each child's needs. The Contractor may utilize Medicaid (or private insurance) reimbursable services to comply with this requirement. If a counseling or therapy service is not available or accessible for each child, the Contractor is responsible for the direct provision of the service.

k. Caseload Ratios

The Contractor shall maintain the following caseload ratios:

Agreement Number: PAFC15-63011

Amendment Number: 4

1. Foster care workers shall have a caseload of no more than fifteen (15) children at any time at the execution of this contract. The Contractor shall work in collaboration with MDHHS in the development of a plan that will reduce caseloads by September 30, 2017. That plan will be developed on or before June 1, 2017.
2. On or after September 30, 2017, foster care workers will have a caseload assigned to them of no more than thirteen (13) children, as their regular, ongoing caseload. A regular, ongoing caseload will be defined as the cases assigned to a specific worker for ongoing casework responsibility, not cases being temporarily covered for the purposes of worker leave or departure. Even in cases of temporary coverage, an assigned caseload shall not exceed fifteen (15) children at any time. A mixed caseload comprised of more than one program type shall not exceed the prorated total equal to one full caseload.
3. Foster care/social services supervisors shall supervise no more than five (5) foster care/social services staff at any time.

In addition, PAFC's will work collaboratively with DHHS in the following ways:

1. DHHS and PAFC partners will work with Public Consulting Group (PCG) in completing the establishment of fair rates. This recommendation of the established fair rates will be completed by June 1, 2017. If the recommended rate is not approved for fiscal year 2018 implementation DHHS and PAFC partners will reevaluate the 13:1 ratio recommendation by September 30, 2017.
2. DHHS and PAFC's will work collaboratively to establish a joint protocol for an annual rate review process and will engage in said process. This draft protocol will be developed by June 1, 2017.

Additional Compliance Provisions

The Contractor shall comply with the provisions of:

- a. 1984 Public Act, 114, as amended being M.C.L. 3.711 *et seq.*, Interstate Compact on the Placement of Children.
- b. 1975 Public Act 238, as amended, being M.C.L. 722.621 *et seq.*, Child Protection Law.
- c. 1982 Public Act 162, as amended, being M.C.L. 450.2101 *et seq.*, Michigan Nonprofit Corporation Act.
- d. 1994 Public Act 204, as amended, being M.C.L. 722.921 *et seq.*, Michigan Children's Ombudsman Act.

Agreement Number: PAFC15-63011

Amendment Number: 4

- e. 1973 Public Act 116, as amended, being M.C.L. 722.111 *et seq.*, Michigan Child Care Organization Act.
- f. 1939 Public Act 288, Chapter X, being M.C.L. 710.1 *et seq.*, Michigan Adoption Code.
- g. 1984 Public Act 203, as amended, being M.C.L. 722.951 *et seq.*, Michigan Foster Care and Adoption Services Act.
- h. The Social Security Act as amended by the Multiethnic Placement Act of 1994 (MEPA); Public Law 103-382, and as amended by Section 1808 of the Small Business Job Protection, the Interethnic Adoption Provision (IEAP).
- i. The Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.*
- j. 1976 Public Act 453, as amended, being M.C.L. 37.2101 *et seq.*, Elliott-Larsen Civil Rights Act.
- k. Fostering Connections to Success Act of 2008
- l. Preventing Sex Trafficking and Strengthening Families Act, Federal PL 113-183
- m. Social Security Act, 42 USC 671(a)(20)
- n. Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Security Policy located on the following link: <https://www.fbi.gov/about-us/cjis/cjis-security-policy-resource-center>

2.10. Services to be Provided

d. Staff Training

1) Child Welfare Training Institute: Requirements

The Contractor shall ensure that staff transferring to a foster care social service position from another children's services position that has successfully completed the Office of Workforce Development and Training (OWDT) Pre-Service Institute (PSI) training in that program, shall attend and complete OWDT-Foster Care Private Agency Program Specific Transfer Training (PSTT) within six months of assuming the foster care position.

2) OWDT: Registration Process

- a) The Contractor shall register all staff required to attend OWDT training by each individual staff member through the Learning Management System.
- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To cancel or change training registration, the Contractor will need to directly contact OWDT by telephone or email.

Agreement Number: PAFC15-63011
Amendment Number: 4

- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by MDHHS at least seven days before the training commences.

3) Foster Home Certification Supervisory Staff: Training Requirements

The Contractor shall ensure that all foster home certification supervisors successfully complete certification training, prior to assuming supervisory responsibility for social service workers who perform foster home licensing functions.

4) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

5) Completion of Security Awareness Training (SAT)

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who is authorized to have access to client fingerprint-based criminal history record information (CHRI) under this Agreement to successfully complete security awareness training (SAT) within six months of appointment to a position with (CHRI) access and every two years thereafter. Documentation of successful SAT completion is to be located in the personnel record.

Security awareness training is located through the Learning Management System or on the following link:
www.michiganchildwelfaretraining.com.

2.11. Key Performance Indicator Outcomes

During the period of this Agreement, the Contractor shall work toward the achievement of the Key Performance Indicators (KPI) listed below. For purposes of the annual contract compliance reviews, compliance with KPIs shall be assessed based on the prior twelve months indicator of the most recent Children's Services Agency – Monthly Management Report in which the Contractors review occurs.

If a Contractor is not meeting the KPIs listed below, the Contractor shall include in its annual assessment and written plan (as required by R 400.12207, Staff

Agreement Number: PAFC15-63011
Amendment Number: 4

Responsibilities) with specific activities the Contractor shall complete to demonstrate improvement in the KPI measures. The Contractor shall submit the written plan to Child Welfare Field Operations by October 1st of each year.

Official KPI data shall come from MDHHS via MiSACWIS. The Contractor shall conduct validation activities on an ongoing basis to assure the KPI measures have been entered in MiSACWIS accurately. The Contractor shall be responsible for ensuring accurate and timely data entry into MiSACWIS.

a. Medical – Initial

No fewer than 85% of children supervised by the Contractor will have an initial medical examination within 30 days of removal (ISEP Item 6.43).

b. Medical – Periodic (Well Child)

Following an initial medical examination, at least 95% of children supervised by the Contractor shall receive periodic medical examinations and screenings according to the guidelines set forth by the American Academy of Pediatrics (ISEP Item 6.47).

c. Medical – Yearly (14 Months)

Following an initial medical examination, at least 95% of children supervised by the Contractor shall receive yearly (up to 14 months from the previous exam) medical examinations and screenings (FOM 801 Policy).

d. Dental - Initial

No fewer than 90% of children supervised by the Contractor shall have an initial dental examination within 90 days of removal unless the child has had an exam within six months prior to placement or the child is less than four years of age (ISEP Item 6.44).

e. Dental – Yearly

No fewer than 95% of children supervised by the Contractor shall have a dental examination at least every 12 months (FOM 801 Policy).

f. Worker-Child Visits

No fewer than 95% of children supervised by the Contractor will be visited by their assigned worker in accordance with guidelines in the ISEP (ISEP Item 6.39).

Agreement Number: PAFC15-63011

Amendment Number: 4

g. Worker-Parent Visits

No fewer than 85% of the children supervised by the Contractor with a permanency goal of reunification, the child's caseworker shall have face-to-face contacts with the child's parent(s) in accordance with the guidelines in the ISEP (ISEP Item 6.40).

h. Parent-Child Visits

No fewer than 85% of children supervised by the Contractor with a goal of reunification shall have at least twice-monthly visitation with their parent(s) in accordance with the guidelines in FOM 722-06I Policy.

i. Children's Foster Care Service Plans – Timely Case Plans

No fewer than 95% of children supervised by the Contractor shall have an initial service plan completed within 30 days of entry into foster care and quarterly thereafter in accordance with the guidelines in the ISEP (ISEP Items 6.31 and 6.32).

j. Children's Foster Care Timely Case Service Plan Approvals

No fewer than 95% of children supervised by the Contractor shall have a case service plan approved within 14 days of case worker submission to the supervisor for review (FOM 722-09 Policy).

k. Supervisor Oversight

No fewer than 95% of children supervised by the Contractor shall meet at least monthly with each assigned case worker to review the status and progress of each case on the workers caseload (ISEP Item 6.30)

2.16. Private Agency MiSACWIS

The Contractor shall ensure that private agency staff has access to the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) through a web-based interface, henceforth referred to as the "MiSACWIS application." The Contractor shall ensure that staff follow the MiSACWIS requirements for CPA contracts which are found at http://www.michigan.gov/documents/dhs/Private_Agency_MiSACWIS_for_CPA_Contracts_464663_7.pdf

For all agency assigned cases in MiSACWIS, the Contractor shall enter all case management activities, including payments and all required documentation per policy in MiSACWIS.

Agreement Number: PAFC15-63011
Amendment Number: 4

2.23 Criminal Background Check

As a condition of this Agreement, the Contractor certifies that the Contractor shall, prior to any individual performing work under this Agreement, conduct or cause to be conducted for each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with:

- a. Clients under this Agreement, or who has access to client information, an Internet Criminal History Access Tool (ICHAT) check and a National and State Sex Offender Registry check.

Information about ICHAT can be found at <http://apps.michigan.gov/ichat>.

The Michigan Public Sex Offender Registry web address is <http://www.mipsor.state.mi.us>.

The National Sex Offender Public Website address is <http://www.nsopw.gov>.

- b. Children under this Agreement, a Central Registry (CR) check.

Information about CR can be found at http://www.mi.gov/MDHHS/0,1607,7-124-5452_7119_48330-180331-,00.html.

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who has access to client information, under this Agreement to timely notify the Contractor in writing of criminal convictions (felony or misdemeanor) and/or pending felony charges or placement on the Central Registry as a perpetrator.

Additionally, the Contractor shall require each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with clients under this Agreement or who has access to client information and who has not resided or lived in Michigan for each of the previous ten (10) years to sign a waiver attesting to the fact that they have never been convicted of a felony or identified as a perpetrator, or if they have, the nature and recency of the felony.

The Contractor further certifies that the Contractor shall not submit claims for or assign to duties under this Agreement, any employee, subcontractor, subcontractor employee, or volunteer based on a determination by the Contractor that the results of a positive ICHAT and/or a CR response or reported criminal felony conviction or perpetrator identification make the individual ineligible to provide the services.

Agreement Number: PAFC15-63011
 Amendment Number: 4

The Contractor must have a written policy describing the criteria on which its determinations shall be made and must document the basis for each determination. The Contractor may consider the recency and type of crime when making a determination. Failure to comply with this provision may be cause for immediate cancellation of this Agreement. In addition, the Contractor must further have a written policy regarding acceptable screening practices of new staff members and volunteers who have direct access to clients and/or client's personal information, which serve to protect the organization and its clients that is clearly defined. The Contractor must also assure that any subcontractors have both of these written policies.

If MDHHS determines that an individual provided services under this Agreement for any period prior to completion of the required checks as described above, MDHHS may require repayment of that individual's salary, fringe benefits, and all related costs of employment for the period that the required checks had not been completed.

Article III

In Section 3., MDHHS RESPONSIBILITIES, Item 3.1., Payments, b., g., and h., and Item 3.2, Performance Evaluation and Monitoring, shall be deleted and replaced with:

3.1. Payments

- b. The Contractor's administrative rate(s) for services provided under this Agreement shall be:

Bridges Provider Number 6358579
 MiSACWIS Provider Number 10400641

<u>Service Code</u>	<u>Per Diem Rate</u>	<u>Effective Date</u>
780	\$45.00	10/01/16
782	\$28.00	10/01/13
TR	\$37.00	10/01/13
0838	*\$2.50	10/01/13

*The above rate is only to be used for American Indian Children

If the Contractor has an adoption agreement with MDHHS and fails to register a child on the Michigan Adoption Resource Exchange (MARE) as required in that agreement, the Contractor's Foster Care administrative rate for that child shall be reduced by 20% until the child is registered.

Agreement Number: PAFC15-63011
Amendment Number: 4

The contractor will receive reimbursement subject to appropriations for relative licensure as outlined in that years State fiscal appropriation.

If a Contractor does not submit the financial cost reports as described in Section 2., CONTRACTOR RESPONSIBILITIES, the per diem administrative rate shall be reduced by \$3.00 until contractor becomes compliant with the reporting requirements.

g. Foster Care Training Payments

Payments will be made for eligible training which commenced after January 1, 2012.

A payment will be made to the Contractor for each staff that completes training and passes competency tests as required in the Implementation, Sustainability and Exit Plan according to the following schedule:

1) Completion of the Child Welfare Caseworker Training

Payment will be \$6,000.00 total, calculated on a per diem basis, for completion of OWDT-PSI that includes a minimum of 9 weeks of competency-based classroom and field training if the caseworker passes the competency evaluation within 16 weeks of hire.

2) Completion of the Child Welfare Certificate (CWC) Training

Payment will be \$3,000.00 total, calculated on a per diem basis, for completion of the OWDT-CWC that includes a minimum of five weeks of competency-based classroom and field training if the caseworker certified certificate holder passes the competency evaluation.

3) Completion of the Child Welfare Supervisor Training

Payment will be \$1,500.00 total, calculated on a per diem basis, for completion of the Supervisor Training that includes a minimum of one week within 90 days of hire/promotion, if the supervisor passes the competency evaluation.

All Supervisors hired on or after January 1, 2017 must complete the Supervisor Training and pass the competency evaluation.

4) Completion of the Child Welfare Transfer Training

The two week foster care PSTT shall be completed within six months of hire.

Agreement Number: PAFC15-63011
Amendment Number: 4

Payment will be \$2,800.00 for the completion of the foster care PSTT training. The training is the same as the Foster Care Core Training for Foster Care caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated.

- h. For all Contractor staff hired on or after May 1, 1998 attending required OWDT-PSI, PSTT, and supervisor training, MDHHS-OWDT shall reimburse the Contractor at the Contractor's normal rate of reimbursement or State rates, whichever is less for staff trainee expenditures incurred as part of OWDT attendance. MDHHS-OWDT does not cover travel reimbursement for in-service training. Travel reimbursement shall be limited to lodging, mileage and parking with the following conditions:
 - 1) For each trainee who attends the training session, MDHHS shall reimburse the Contractor up to five nights lodging per week if lodging expense is incurred. If training continues for two consecutive weeks or longer and the cost of lodging is less than the mileage cost to travel to and from the Contractor's facility over the intervening weekend, the Contractor may request the director of OWDT in advance for a travel exception for weekend lodging.
 - 2) For each mile of travel to a OWDT training session closest to the Contractor's site, MDHHS shall reimburse the Contractor for mileage to and from the training and the trainee's assigned work location or home, whichever is closer. The applicable State rate for mileage shall be the lesser of the Contractor's prevailing rate or the State's standard rate.
 - 3) Parking shall be reimbursed at actual cost, documented with a receipt.
 - 4) MDHHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from DCWL. Refer to the OWDT web site for current reimbursement information for OWDT training at <http://www.michiganchildwelfaretraining.com/Training/Travel.aspx>

Classroom Training Payment

- 1) The Contractor must submit a signed and dated agency letterhead memo attached to the DHS-1582 Payment Voucher that includes the following information:
 - a) Worker name

Agreement Number: PAFC15-63011

Amendment Number: 4

- b) Training, type, i.e. PSST, PSI etc.
 - c) Training dates (time span in training)
 - d) Amount of reimbursement requested.
 - e) A copy of the transcript reflecting the completion of the training for each foster care worker and supervisor covered by the payment voucher. This is required before accounting will issue payment.
 - f) Memo signed by senior management; not the individual who attended training.
- 2) The information must be submitted electronically to: MDHHS-FederalComplianceDivision@michigan.gov. The subject line shall read: Training Payment.

Training Travel Reimbursement

- 1) The Contractor must submit:
- a) Certification letter on agency letterhead signed and dated by senior management to include:
 - Agency Federal ID Number
 - Exact trainee name as registered in the Learning Management System
 - Exact class name
 - Beginning and ending travel dates
 - Amount of reimbursement requested
 - b) DHS-1582 Payment Voucher.
 - c) DHS-1582 TV-NSE for each trainee.
 - d) MapQuest (or equivalent) printouts for each travel route.
 - e) All original receipts.
 - f) Transcripts showing the training completed.
- 2) Please submit the above information to:

Ingham County MDHHS/OWDT
Attention: Travel Reimbursement
PO Box 30088
5303 S. Cedar Street
Lansing, MI 48911

3.2. Performance Evaluation and Monitoring

The services provided by the Contractor under this Agreement shall be evaluated and assessed at least annually by MDHHS on the basis of the criteria outlined in Section 2.11.

MDHHS shall perform contract monitoring through activities such as:

Agreement Number: PAFC15-63011
Amendment Number: 4

- a. Auditing expenditure reports.
- b. Conducting on-site monitoring.
- c. Reviewing and analyzing written plans and reports.

EXHIBIT 7

AGREEMENT NUMBER: PAFC15-63011

AMENDMENT NUMBER: 5

Between

THE STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

And



CONTRACTOR	Bethany Christian Services
CONTRACTOR ADDRESS	901 Eastern Ave, NE; PO Box 294, Grand Rapids, MI 49501
CONTRACTOR EMAIL	BdeVos@bethany.org

CONTRACT ADMINISTRATOR	EMAIL
Sarah Goad	goads@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Placing Agency Foster Care		
GEOGRAPHIC AREA	Statewide		
INITIAL EFFECTIVE DATE	10/01/2014	CURRENT EXPIRATION DATE	09/30/2017
CURRENT AGREEMENT VALUE	\$4,290,000.00		
AGREEMENT TYPE	Unit Rate/Actual Cost		

AMENDMENT DESCRIPTION			
EXTEND EXPIRATION DATE	☒ YES	☐ NO	NEW EXPIRATION DATE 09/30/2018
AMENDMENT AMOUNT		ESTIMATED REVISED AGGREGATE AGREEMENT VALUE	
\$2,510,000.00	☒ INCREASE	☐ DECREASE	\$6,800,000.00
NATURE OF CHANGE	This amendment exercises an option year, increases the agreement value and changes language in the agreement.		

The undersigned have the lawful authority to bind the Contractor and the Michigan Department of Health and Human Services (MDHHS) to the terms set forth in this Agreement.

FOR THE CONTRACTOR:

Bethany Christian Services

Contractor

Signature of Director or Authorized Designee

Brian J. De Vos, Senior VP Child & Family Services

Print Name

April 13, 2017

Date

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

Signature of Director or Authorized Designee

Christine H. Sanches

Print Name

5.3.17

Date

Agreement Number: PAFC15-63011
 Amendment Number: 5

	<u>Agreement Period</u>	<u>Amount</u>
Year 1	10/01/2014 through 09/30/2015	\$1,430,000.00
Year 2	10/01/2015 through 09/30/2016	\$1,430,000.00
Year 3	10/01/2016 through 09/30/2017	\$1,430,000.00
Year 4	10/01/2017 through 09/30/2018	\$2,510,000.00
Total Amount:		\$6,800,000.00

Check all agreement years affected by this amendment:
☐ Year 1 ☐ Year 2 ☒ Year 3
☒ Year 4 ☐ Year 5 ☐ Year 6

**STATE OF MICHIGAN
 DEPARTMENT OF HEALTH AND HUMAN SERVICES**

WHEREAS, the Michigan Department of Health and Human Services (hereinafter referred to as "MDHHS") entered into a contractual Agreement effective 10/01/2014, with Bethany Christian Services (hereinafter referred to as "Contractor"), having a mailing address of 901 Eastern Ave, NE; PO Box 294, Grand Rapids, MI 49501, for the provision of certain services as set forth therein; and,

WHEREAS, it is mutually desirable to MDHHS and to the Contractor to amend the aforesaid Agreement.

THEREFORE, in consideration of the promises and mutual covenants hereinabove and hereinafter contained, the parties hereto agree to the following amendment of said Agreement. This amendment shall be attached to the Agreement, said Agreement being hereby reaffirmed and made a part hereof.

Article I

This amendment shall be effective on the date of MDHHS signature.

Article II

MDHHS will exercise the second of two, one-year options to extend. Therefore, the end date of the Agreement shall be changed from 09/30/2017 to 09/30/2018.

Article III

The maximum dollar amount of the Agreement shall be increased by \$2,510,000.00 from \$4,290,000.00 to \$6,800,000.00 for the period 10/01/2014, through September 30, 2018.

Agreement Number: PAFC15-63011
Amendment Number: 5

Article IV

In Section 1., Program Requirements, Item 1.2., Referrals, b., shall be deleted and replaced with:

- b. Upon placement, MDHHS shall provide the Contractor at minimum, with a court order, a Medical Authorization Card (DHS-3762), the Case Referral and Acceptance - Individual Service Agreement (DHS-3600) and all known information about the child and family.

Article V

In Section 2., CONTRACTOR RESPONSIBILITIES, Item 2.9., Compliance Requirements, a. and c., Item 2.10., Services to be Provided, Item 2.11., Key Performance Indicator Outcomes, second paragraph, Item 2.17., Billing and Item 2.23, b., Criminal Background Check shall be deleted and replaced with:

2.9. Compliance Requirements

Except in subsection (h), the Contractor shall comply with the following requirements:

- a. The Contractor shall comply with all applicable MDHHS policy in the Children's Foster Care (FOM), Guardianship (GDM), Service Requirements Manual (SRM), Interstate Compact (ICM), Native American Affairs (NAA) and Adoption (ADM) Manuals and MDHHS policy amendments (including interim policy bulletins).
- c. The Contractor shall comply with the MDHHS non-discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all MDHHS supervised children, and to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

2.10. Services to be Provided

- a. Foster Home Licensing Data Entry

Agreement Number: PAFC15-63011
Amendment Number: 5

The Contractor shall document all recruitment and licensing activities into the tracking system identified by MDHHS.

b. Service Standards for Trial Reunification

Trial Reunification is a court-ordered placement where the child is returned from an out-of-home placement to the care of the parent or guardian from whom he or she was removed. The child remains under court supervision during the Trial Reunification period with the MDHHS retaining placement care and custody

- 1) The Contractor shall provide the following services to children in trial reunification:
 - a) Assist in preparing the parent, child, and caregiver for the transition to trial reunification. See FOM 722-7B.
 - b) A Family Team Meeting prior to placement of a child in the parental home to develop a transition plan with the parent, caregiver and child, if age appropriate. The Contractor shall have Family Team Meetings quarterly until case closure. See FOM 722-06B.
 - c) Complete a new Family Assessment of Needs and Strengths, Child Assessment of Needs and Strengths, and Safety Assessment and Safety Plan. See FOM 722-8A, 722-8B and 722-9B.
 - d) Continue case worker visit expectations as required in FOM 722-6H.
 - e) Maintain support services until case closure. The Contractor shall document services needed to continue to meet the child's needs and identified providers for such services to provide continuity of services. See FOM 722-7B.
 - f) Continue assessing and monitoring of the case plan and safety plan.

c. Staff Training

1) Child Welfare Training Institute: Requirements

The Contractor shall ensure that staff transferring to a foster care social service position from another children's services position that has successfully completed the Office of Workforce Development and Training (OWDT) Pre-Service Institute (PSI) training in that program, shall attend and complete OWDT-Foster Care Private Agency Program Specific Transfer Training (PSTT) within six months of assuming the foster care position.

Agreement Number: PAFC15-63011
Amendment Number: 5

2) OWDT: Registration Process

- a) The Contractor shall register all staff required to attend OWDT training by each individual staff member through the Learning Management System.
- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To cancel or change training registration, the Contractor will need to directly contact OWDT by telephone or email.
- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by MDHHS at least seven days before the training commences.

3) Foster Home Certification Supervisory Staff: Training Requirements

a) Certification Workers

Staff who conduct any functions related to the certification of foster homes must attend and pass the five-day class on certifying foster homes, investigating and handling complaints against foster homes. Staff are required to attend the class within six months of being assigned to the certification function.

a) Certification Supervisors

Supervisors who have not attended certification training as a certification staff person are to attend the five-day certification and complaint investigation training prior to supervising the certification of foster homes.

b) In-service Training

Certification workers must complete a minimum of 32 in-service training hours per fiscal year. Certification supervisors must complete a minimum of 16 in-service training hours per fiscal year (see Communication Issuance 14-116 for more details).

4) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

Agreement Number: PAFC15-63011
Amendment Number: 5

5) Completion of Security Awareness Training (SAT)

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who is authorized to have access to client fingerprint-based criminal history record information (CHRI) under this Agreement to successfully complete security awareness training (SAT) within six months of appointment to a position with (CHRI) access and every two years thereafter. Documentation of successful SAT completion is to be located in the personnel record.

Security awareness training is located through the Learning Management System or on the following link:
http://www.michigan.gov/mdhhs/0,5885,7-339-71551_11120_74572---,00.html

- 6) The Contractor shall ensure that each social services staff receives a minimum of 32 hours of qualifying in-service training on an annual basis. The Contractor shall ensure that each social service supervisor receives a minimum of 16 hours of qualifying in-service training on an annual basis. All qualified training shall be training that improves child welfare practice.

d. Relative Licensing

The Contractor may elect to facilitate the licensure of relative caregivers providing care to children in out-of-home placements that are under the direct care and supervision of MDHHS. Facilitation of licensure includes but is not limited to the following activities:

- 1) Accept referrals of unlicensed relative caregivers from MDHHS, for possible licensure as a foster family home, based on the Contractor's capacity to complete the licensing process as outlined in foster care policy.
- 1) On forms provided by MDHHS, and when requested by MDHHS, the Contractor shall report to MDHHS a minimum of monthly on the number and characteristics of unlicensed relative homes and the children in those homes, and on progress in licensing the homes.

e. Adoption and Foster Care Analysis Reporting System Requirements

The Contractor shall enter all child and family information into the Michigan Statewide Automated Child Welfare System (MiSACWIS) to enable MDHHS to comply with Federal Adoption and Foster Care Analysis and Reporting

Agreement Number: PAFC15-63011
Amendment Number: 5

System (AFCARS) reporting requirements. Failure to comply with this reporting requirement shall result in a penalty for the Contractor as specified in Section 3.1 f. of this Agreement.

2.11. Key Performance Indicator Outcomes

During the period of this Agreement, the Contractor shall work toward the achievement of the Key Performance Indicators (KPI) listed below. For purposes of the annual contract compliance reviews, compliance with KPIs shall be assessed based on the prior twelve months indicator of the most recent Children's Services Agency – Monthly Management Report in which the Contractors review occurs.

If a Contractor is not meeting the KPIs listed below, the Contractor shall include in its annual assessment and written plan (as required by R 400.12207, Staff Responsibilities) specific activities the Contractor shall complete to demonstrate improvement in the KPI measures. The Contractor shall submit the written plan to the Contractor's Child Welfare Services and Support Analyst by October 1st of each year.

2.17. Billing

The Contractor shall submit through the MiSACWIS system the bi-weekly roster for any child in the Contractors care per the instructions within the MiSACWIS system. The billing shall indicate the units of service provided by the Contractor and shall be submitted to MDHHS within 30 days from the end of the billing period.

No original request for payment submitted by the Contractor more than three years after the close of the two week billing period during which services were provided shall be honored for payment.

When the Contractor's financial records reveal that payment for a child has not been provided by MDHHS within 30 days of receiving all necessary documentation, the Contractor will seek payment resolution by contacting the direct supervisor of the assigned MDHHS worker in writing. Any concerns over a payment authorization or issuance that cannot be resolved within 30 days of the written notice must be reported to the MDHHS County Director for immediate resolution. The Contractor will apprise MDHHS Central Office Administration of any ongoing, unresolved payment concerns.

2.23 Criminal Background Check

b. Children under this Agreement, a Central Registry (CR) check.

Agreement Number: PAFC15-63011
Amendment Number: 5

Information about CR can be found at
http://www.michigan.gov/mdhhs/0,5885,7-339-73971_7119_50648_48330-180331--,00.html

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who has access to client information, under this Agreement to timely notify the Contractor in writing of criminal convictions (felony or misdemeanor) and/or pending felony charges or placement on the Central Registry as a perpetrator.

Additionally, the Contractor shall require each new employee, employee, subcontractor, subcontractor employee or volunteer who works directly with clients under this Agreement or who has access to client information and who has not resided or lived in Michigan for each of the previous ten (10) years to sign a waiver attesting to the fact that they have never been convicted of a felony or identified as a perpetrator, or if they have, the nature and recency of the felony.

The Contractor further certifies that the Contractor shall not submit claims for or assign to duties under this Agreement, any employee, subcontractor, subcontractor employee, or volunteer based on a determination by the Contractor that the results of a positive ICHAT and/or a CR response or reported criminal felony conviction or perpetrator identification make the individual ineligible to provide the services.

The Contractor must have a written policy describing the criteria on which its determinations shall be made and must document the basis for each determination. The Contractor may consider the recency and type of crime when making a determination. Failure to comply with this provision may be cause for immediate cancellation of this Agreement. In addition, the Contractor must further have a written policy regarding acceptable screening practices of new staff members and volunteers who have direct access to clients and/or client's personal information, which serve to protect the organization and its clients that is clearly defined. The Contractor must also assure that any subcontractors have both of these written policies.

Article VI

In Section 3., MDHHS RESPONSIBILITIES, Item 3.1., Payment, h., 4) shall be deleted and replaced with:

Agreement Number: PAFC15-63011
Amendment Number: 5

4) MDHHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from DCWL. Refer to the OWDT web site for current reimbursement information for OWDT training at http://www.mich.gov/mdhhs/0,5885,7-339-71551_11120_74572---,00.html

EXHIBIT 8

AGREEMENT NUMBER: PAFC15-33001

AMENDMENT NUMBER: 3

Between

THE STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

And



CONTRACTOR	St. Vincent Catholic Charities
CONTRACTOR ADDRESS	2800 W. Willow Street, Lansing, Michigan 48917-1833
CONTRACTOR EMAIL	seykaa@stvcc.org

CONTRACT ADMINISTRATOR	EMAIL
Sarah Goad	GoadS@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Placing Agency Foster Care		
GEOGRAPHIC AREA	Statewide		
INITIAL EFFECTIVE DATE	October 1, 2014	CURRENT EXPIRATION DATE	September 30, 2016
CURRENT AGREEMENT VALUE	\$1,790,000.00		
AGREEMENT TYPE	Unit Rate/Per Diem		

AMENDMENT DESCRIPTION			
EXTEND EXPIRATION DATE	☒ YES		NEW EXPIRATION DATE
		September 30, 2017	
AMENDMENT AMOUNT		ESTIMATED REVISED AGGREGATE AGREEMENT VALUE	
\$895,000.00	☒ INCREASE	\$2,685,000.00	
NATURE OF CHANGE	This amendment extends this Agreement for one year, adds money, changes the Agreement format and changes Agreement language that pertains to MDHHS organizational name changes, Cost Accounting, Financial Audit Requirements and Modified Settlement Agreement.		

The undersigned have the lawful authority to bind the Contractor and the Michigan Department of Health and Human Services (MDHHS) to the terms set forth in this Agreement.

FOR THE CONTRACTOR:

St. Vincent Catholic Charities

Contractor

Signature of Director or Authorized Designee

ANDREA E. SEYKA

Print Name

6/15/16

Date

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

Signature of Director or Authorized Designee

Kim Stephen

Print Name

7/8/16

Date

Agreement Number: PAFC15-33001

Amendment Number: 3

	<u>Agreement Period</u>	<u>Amount</u>
Year 1	October 1, 2014 through September 30, 2015	\$895,000.00
Year 2	October 1, 2015 through September 30, 2016	\$895,000.00
Year 3	October 1, 2016 through September 30, 2017	\$895,000.00
Total Amount:		\$2,685,000.00

Check all agreement years ☐ Year 1 ☒ Year 2 ☒ Year 3
 affected by this amendment: ☐ Year 4 ☐ Year 5 ☐ Year 6

**STATE OF MICHIGAN
DEPARTMENT OF HEALTH & HUMAN SERVICES**

WHEREAS, the Department of Health & Human Services of the state of Michigan (hereinafter referred to as "MDHHS") entered into a contractual Agreement effective October 1, 2014, with St. Vincent Catholic Charities (hereinafter referred to as "Contractor"), having a mailing address of 2800 W. Willow Street, Lansing, Michigan 48917-1833, for the provision of certain services as set forth therein; and,

WHEREAS, it is mutually desirable to MDHHS and to the Contractor to amend the aforesaid Agreement.

THEREFORE, in consideration of the promises and mutual covenants hereinabove and hereinafter contained, the parties hereto agree to the following amendment of said Agreement. This amendment shall be attached to the Agreement, said Agreement being hereby reaffirmed and made a part hereof.

Article I

This amendment shall be effective on the date of MDHHS signature.

Article II

MDHHS will exercise the first of two, one-year options to extend. Therefore, the end date of the Agreement shall be changed from September 30, 2016 to September 30, 2017.

Article III

The maximum dollar amount of the Agreement shall be increased by \$895,000.00 from \$1,790,000.00 to \$2,685,000.00 for the period October 1, 2014, through September 30, 2017.

Article IV

Agreement Number: PAFC15-33001

Amendment Number: 3

The following are major language changes in this amendment:

1. The amendment contains updates to the general formatting of the contract, and reflects MDHHS organizational name changes and small programmatic changes.
2. The amendment reflects necessary changes related to Dwayne B. v. Snyder, et al., 2:06-cv-13548. Language containing the term Modified Settlement Agreement is replaced with the term Implementation, Sustainability, and Exit Plan (ISEP).
3. The amendment reflects necessary changes related to the Cost Reporting and Financial Audit Requirements.

Article V

Section I., CONTRACTOR RESPONSIBILITIES, and Section II., MDHHS RESPONSIBILITIES shall be deleted and replaced with Number 1., PROGRAM REQUIREMENTS, Number 2., CONTRACTOR RESPONSIBILITIES, and Number 3., MDHHS RESPONSIBILITIES as follows:

1. PROGRAM REQUIREMENTS

1.1. Client Eligibility Criteria

a. Eligible Clients

Children for whom the family court has issued an order which makes the Michigan Department of Health and Human Services responsible for the child's placement, care and supervision.

OR

Children for whom the family court has authorized a placement in the parental home in a Trial Reunification living arrangement.

The period of time eligible for a Trial Reunification shall not exceed 180 days from the date of the child(ren)'s placement in a parental home. Child(ren) must enter Trial Reunification directly from foster care and the family court must retain jurisdiction with care and custody continuing with MDHHS.

b. Determination of Eligibility

If MDHHS makes a referral to a child placing agency for foster care case management services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral within one hour of

Agreement Number: PAFC15-33001

Amendment Number: 3

receipt of the referral. If a need for placement is imminent, MDHHS may make referrals for placement concurrently to other contracted providers. Contractor may not transfer a foster care case to another child placing agency. After acceptance of a foster care referral, the Contractor may not refer the case back to the Department except for the reasons outlined in the Children's Foster Care Manual (FOM) or upon the written approval of the County Director, the Children's Services Agency Director, or the Deputy Director.

1.2. Referrals

a. The Contractor accepts a referral from MDHHS by doing either of the following:

- 1) Submitting to MDHHS a written agreement to perform the services related to the particular child or particular individuals that the Department referred to the Contractor; or
- 2) Engaging in any other activity that results in MDHHS being obligated to pay the Contractor for the services related to the particular child or particular individuals that the Department referred to the Contractor.

b. Upon placement, MDHHS shall provide the Contractor at minimum, with a court order, a Medical Authorization Card (DHS-3762), the Individual Service Agreement (DHS-3600) and all known information about the child and family.

1.3. Legal or Court Related

MDHHS shall involve the Contractor, to the extent allowed by law, in matters relating to any legal or court activities concerning the child while in the Contractor's care. If the Contractor is to be involved in the court proceedings, MDHHS shall provide the Contractor with written reports for court use upon request, subject to confidentiality requirements imposed by statute.

2. CONTRACTOR RESPONSIBILITIES

2.1. Email Address

The Contractor authorizes MDHHS to use the contact information below to send Agreement related notifications/information. The Contractor shall provide MDHHS with updated contact information if it changes.

Contact email address: seykaa@stvcc.org

2.2. Requests for Information

Agreement Number: PAFC15-33001

Amendment Number: 3

The Contractor may be required to meet and communicate with MDHHS representatives and from time to time MDHHS may require that the Contractor create reports or fulfill requests for information as necessary to fulfill the MDHHS' obligations under statute and/or Dwayne B. v. Snyder, et al., 2:06-cv-13548, herein referred to as the Implementation, Sustainability, and Exit Plan (ISEP).

The Contractor shall make available to MDHHS copies of any outside reviews, non-redacted FOIA requests, or audits relating to the contracted program.

2.3. Geographic Area

The Contractor shall provide services described herein in the following geographic area: Statewide

2.4. Licensing Requirements

The MDHHS Division of Child Welfare Licensing (DCWL) is the licensing agency for Child Placing Agencies (CPA). A license is issued to a certain person or organization at a specific location, is non-transferable, and remains the property of the Department. Therefore, a child placing agency must be established at a specific location.

The Contractor shall ensure that, for the duration of this agreement, it shall maintain a license for those program areas and services that are provided for in this Agreement. If the Contractor fails to comply with this section, MDHHS may terminate this Agreement for default.

The Contractor is licensed to provide service under this agreement under the following license number: CB330201019

2.5. Location of Facilities

The Contractor shall provide services described herein at the following location(s):

2800 West Willow
Lansing, MI 48917

Direct foster care services shall be provided in client, relative caregiver, and foster parent homes.

2.6. Program Focus and Name

Placement Agency Foster Care (PAFC) is a program that provides a comprehensive and coordinated set of activities designed to place and supervise children in out of home placement.

Agreement Number: PAFC15-33001

Amendment Number: 3

Foster care supervision includes the provision of services as throughout this Agreement and when necessary the referral for additional services that will enhance the child's and the family's functioning and ameliorate the conditions that caused the child's removal from parental custody.

Foster care supervision includes developing and implementing a treatment plan and service agreement to comply with the Foster Care Manual which facilitates permanency planning according to the following guidelines:

- . Reunification
- . Adoption
- . Guardianship
- . Permanent Placement with a Fit and Willing Relative.
- . Another Planned Permanent Living Arrangement (AAPLA)

2.7. Provider Numbers

MISACWIS Provider Number: 10400303

Bridges Provider Number: 6356725

2.8. Credentials

The Contractor shall assure that all staff performing functions under this Agreement, including contractor employees, volunteers and/or subcontractors, are appropriately screened, credentialed, and trained in accordance with licensing rule. Additional staff requirements are identified in Section 2.10 d. of this Agreement.

2.9. Compliance Requirements

Except in subsection (h), the Contractor shall comply with the following requirements:

- a. The Contractor shall comply with all applicable MDHHS policy in the Children's Foster Care (FOM), Guardianship (GDM), Confidentiality (SRM 131), Interstate Compact (ICM), and Adoption (ADM) Manuals and MDHHS policy amendments (including interim policy bulletins).
- b. Throughout the term of this Agreement, the Contractor shall ensure that it provides all applicable MDHHS policy and MDHHS policy amendments (including interim policy bulletins) and applicable Administrative Codes to social service staff. The Contractor shall ensure that social service staff complies with all applicable requirements.

Agreement Number: PAFC15-33001

Amendment Number: 3

MDHHS policies, amendments and policy bulletins, are published on the following internet link: <http://www.michigan.gov/dhs>. Administrative Codes are published at on the following internet link: http://michigan.gov/lara/0,4601,7-154-35738_5698-118524-,00.html

- c. The Contractor shall comply with the MDHHS non-discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

- d. The Contractor shall provide services within the framework of Michigan's Child Welfare Practice Model, MiTEAM. The Contractor shall utilize the skills of engagement, assessment, teaming and mentoring in partnering and building relationships with families and children by exhibiting empathy, professionalism, genuineness and respect. Treatment planning shall be from the perspective of family/child centered practice.
- e. The contractor shall ensure all directives and services ordered by the court are completed to the satisfaction of the court within the timeframes ordered.
- f. The Contractor shall participate in random moment time studies (RMTS). An RMTS is a process where participants are emailed short surveys and asked to indicate what they were doing at an assigned time. The time study is required to determine the amount of time spent on various activities. Based on these results, MDHHS determines the amount that can be charged to various funding sources.
- g. The Contractor shall assure the coordination of all services based on an assessment of the parent's needs. The Contractor shall assure the coordination and provision of all treatment services required based on an assessment of each child's needs. Treatment services include, but are not limited to the provision of counseling/therapy for each child. The Contractor shall ensure the provision of all medical, dental and behavioral health services required based on an assessment of each child's needs. The Contractor may utilize Medicaid (or private insurance) reimbursable services to comply with this requirement. If a counseling or therapy service is not available or accessible for each child, the Contractor is responsible for the direct provision of the service.

Agreement Number: PAFC15-33001

Amendment Number: 3

h. Under 1973, PA 116, as amended by 2015 PA 53, the Contractor has the sole discretion to decide whether to accept or not accept a referral from MDHHS. Nothing in this Agreement limits or expands the application of this Public Act.

i. Compliance with MDHHS Implementation, Sustainability, and Exit Plan

The Contractor shall ensure compliance with all applicable provisions and requirements of Dwayne B. v. Snyder, et al., 2:06-cv-13548, Implementation Sustainability and Exit Plan.

j. Prudent Parent Expectations

The Contractor shall ensure prudent parent expectations are followed as outlined in FOM 722-11, Prudent Parent Standard & Delegation of Parental Consent.

Additional Compliance Provisions

The Contractor shall comply with the provisions of:

- a. 1984 Public Act, 114, as amended being M.C.L. 3.711 *et seq.*, Interstate Compact on the Placement of Children.
- a. 1975 Public Act 238, as amended, being M.C.L. 722.621 *et seq.*, Child Protection Law.
- c. 1982 Public Act 162, as amended, being M.C.L. 450.2101 *et seq.*, Michigan Nonprofit Corporation Act.
- d. 1994 Public Act 204, as amended, being M.C.L. 722.921 *et seq.*, Michigan Children's Ombudsman Act.
- e. 1973 Public Act 116, as amended, being M.C.L. 722.111 *et seq.*, Michigan Child Care Organization Act.
- f. 1939 Public Act 288, Chapter X, being M.C.L. 710.1 *et seq.*, Michigan Adoption Code.
- g. 1984 Public Act 203, as amended, being M.C.L. 722.951 *et seq.*, Michigan Foster Care and Adoption Services Act.
- h. The Social Security Act as amended by the Multiethnic Placement Act of 1994 (MEPA); Public Law 103-382, and as amended by Section 1808 of the Small Business Job Protection, the Interethnic Adoption Provision (IEAP).
- i. The Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.*
- j. 1976 Public Act 453, as amended, being M.C.L. 37.2101 *et seq.*, Elliott-Larsen Civil Rights Act.
- k. Fostering Connections to Success Act of 2008
- l. Preventing Sex Trafficking and Strengthening Families Act, Federal PL 113-183

Compliance with ICWA Requirements

Agreement Number: PAFC15-33001

Amendment Number: 3

The Contractor shall provide case management services in accordance with the "Active Efforts" requirements established in the ICWA; Public Law 95-608 being 25 U.S.C 1901 *et seq.* These requirements include but are not limited to the following:

- a. Establish an American Indian child as a member of a Tribe in accordance with ICWA and as defined in the MDHHS Native American Affairs (NAA) manual.
- b. Provide "Active Efforts" case management services in with in accordance with ICWA and as defined in the NAA manual.
- c. Provide placement of American Indian children in accordance with "Placement Priorities" as established in ICWA and defined in the NAA manual.
- d. Provide "Expert Witness" testimony in accordance with ICWA and as defined in the NAA manual.
- e. Provide services to American Indian families within the context of their culture and ethnicity. Maintaining knowledge in the following:
 - 1) How culture and rituals influence parenting decisions.
 - 2) Determine what services and supports will be most effective.
 - 3) Knowledge and respect of tribal practices.

2.10. Services to be Provided

a. Foster Home Licensing Data Entry

The Contractor shall document all recruitment and licensing activities into the tracking system identified by MDHHS.

b. Caseload Tracking and Reporting

The Contractor shall report to MDHHS caseload ratios for social services supervisors, social service staff and licensing staff in a format and within timeframes as determined by MDHHS.

c. Service Standards for Trial Reunification

Trial Reunification is a court-ordered placement where the child is returned from an out-of-home placement to the care of the parent or guardian from whom he or she was removed. The child remains under court supervision during the Trial Reunification period with the MDHHS retaining placement care and custody

- 1) The Contractor shall provide the following services to children in trial reunification:

Agreement Number: PAFC15-33001

Amendment Number: 3

- a) Assist in preparing the parent, child, and caregiver for the transition to trial reunification. See FOM 722-7B.
- b) A Family Team Meeting prior to placement of a child in the parental home to develop a transition plan with the parent, caregiver and child, if age appropriate. The Contractor shall have Family Team Meetings quarterly until case closure. See FOM 722-06B.
- c) Complete a new Family Assessment of Needs and Strengths, Child Assessment of Needs and Strengths, and Safety Assessment and Safety Plan. See FOM 722-8A, 722-8B and 722-9B.
- d) Continue case worker visit expectations as required in FOM 722-6H.
- e) Maintain support services until case closure. The Contractor shall document services needed to continue to meet the child's needs and identified providers for such services to provide continuity of services. See FOM 722-7B.
- f) Continue assessing and monitoring of the case plan and safety plan.

d. Staff Training

1) Child Welfare Training Institute: Requirements

The Contractor shall ensure that staff transferring to a foster care social service position from another children's services position that has successfully completed the Child Welfare Training Institute (CWTI) Pre-Service Institute (PSI) training in that program, shall attend and complete CWTI-Foster Care Private Agency Program Specific Transfer Training (PSTT) within six months of assuming the foster care position.

2) Child Welfare Training Institute: Registration Process

- a) The Contractor shall register all staff required to attend CWTI training by each individual staff member using the preferred method of CWTI by going directly to the CWTI web site at <http://www.michiganchildwelfaretraining.com/>.
- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To cancel or change training registration, the Contractor will need to directly contact CWTI by telephone or email.
- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by MDHHS at least seven days before the training commences.

3) Foster Home Certification Supervisory Staff: Training Requirements

The Contractor shall ensure that all foster home certification supervisors successfully complete certification training, prior to assuming supervisory

Agreement Number: PAFC15-33001

Amendment Number: 3

responsibility for social service workers who perform foster home licensing functions.

4) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of CWTI training and DCWL Certification Training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

e. Relative Licensing

The Contractor may elect to facilitate the licensure of relative caregivers providing care to children in out-of-home placements that are under the direct care and supervision of MDHHS. Facilitation of licensure includes but is not limited to the following activities:

- 1) Accept referrals of unlicensed relative caregivers from MDHHS, for possible licensure as a foster family home, based on the Contractor's capacity to complete the licensing process as outlined in foster care policy.
- 2) On forms provided by MDHHS, and when requested by MDHHS, the Contractor shall report to MDHHS monthly on the number and characteristics of unlicensed relative homes and the children in those homes, and on progress in licensing the homes.

f. Adoption and Foster Care Analysis Reporting System Requirements

The Contractor shall enter all child and family information into the Michigan Statewide Automated Child Welfare System (MiSACWIS) to enable MDHHS to comply with Federal Adoption and Foster Care Analysis and Reporting System (AFCARS) reporting requirements. Failure to comply with this reporting requirement shall result in a penalty for the Contractor as specified in Section 3.1 f. of this Agreement.

2.11. Expected Program Performance Outcomes

During the period of this Agreement, the Contractor shall work toward the achievement of the performance measures listed below.

MDHHS shall obtain data from its systems on a quarterly basis to be determined by MDHHS, in the format specified by MDHHS. If, based on an evaluation of submitted data, there is a gap between the performance of a Contractor and the

Agreement Number: PAFC15-33001

Amendment Number: 3

performance objective, the Contractor shall within 90 days of receiving the data from MDHHS develop a plan to eliminate the performance gap.

a. Placement Stability

Children supervised by the Contractor shall have no more than two placement settings while supervised by the individual Contractor's program, using the following minimum acceptable standards:

- 1) 0-365 days = 86% or more will have no more than two placement settings.
- 2) 366-730 days = 73% or more will have no more than two placement settings.
- 3) 731 + days = 45% or more will have no more than two placement settings.

b. Timeliness of Reunification

No fewer than 43% of children supervised by the Contractor for 30 days or more shall be discharged from foster care to the home of a parent or legal guardian within 12 months of removal.

c. Permanency of Reunification

No more than 4% of children supervised by the Contractor who were discharged from foster care to the home of a parent or legal guardian within 12 months of removal.

d. Timeliness of Adoptions

No fewer than 36.6% of children supervised by the Contractor for 30 days or more shall be discharged from foster care to a finalized adoption within 24 months of removal.

e. Discharge to Permanency for Children in Foster Care for Long Periods of Time

No fewer than 29.1% of children supervised by the Contractor for the most recent 24 months shall be discharged to a permanent placement prior to their 18th birthday. Permanent placement is defined as Adoption, Guardianship or Reunification.

f. Legally-Free Children in Foster Care for Long Period of Time Who Are Discharged to Permanency

Agreement Number: PAFC15-33001

Amendment Number: 3

No fewer than 98% of children supervised by the Contractor for the most recent 12 months and legally free for adoption shall be discharged to a permanent placement prior to their 18th birthday. Permanent placement is defined as Adoption, Guardianship or Reunification. (A discharge to Reunification for children "legally free" occurs when they are placed with a relative for 6 months or longer. This is for AFCARS reporting purposes by MDHHS.).

g. Sibling Placement

No fewer than 90% of children supervised by the Contractor shall be placed with all members of their sibling group (out of home minor siblings only) unless it has been determined that the placement with the siblings is contrary to the best interests of the children. Contrary to the best interests of the children is defined as:

- 1) Placement together is harmful to one or more of the siblings; or
- 2) One of the siblings has exceptional needs that can only be met in a specialized program or facility; or
- 3) The size of the sibling group makes such placement impractical, not withstanding diligent efforts to place the group together.

2.12. Audit Requirements

Contractor/Vendor Relationship

This Agreement constitutes a contractor/vendor relationship with MDHHS. The Contractor must immediately report to the MDHHS Bureau of Audit any audit findings of a Going Concern or accounting irregularities, including noncompliance with provisions of this Agreement.

2.13. Financial Audit Requirements

a. Required Audit or Notification Letter

Contractors must submit to the Department either a Single Audit, Financial Statement Audit, or Audit Status Notification Letter as described below. If submitting a Single Audit or Financial Statement Audit, Contractors must also submit a Corrective Action Plan for any audit findings that impact MDHHS-funded programs, and management letter (if issued) with a response.

1) Single Audit

Contractors that are a non-profit organization and that expend \$750,000 or more in federal awards during the Contractor's fiscal year, must submit a Single Audit to the Department, regardless of the amount of funding received from the Department. The Single Audit must comply with the requirements of Title 2 Code of Federal Regulations, Subpart F.

2) Financial Statement Audit

Agreement Number: PAFC15-33001

Amendment Number: 3

Contractors exempt from the Single Audit requirements with fiscal years that receive \$500,000 or more in **total funding** from the Department in State and Federal grant funding must submit to the Department a Financial Statement Audit prepared in accordance with generally accepted auditing standards (GAAS).

3) Audit Status Notification Letter

Contractors exempt from the Single Audit and Financial Statement Audit requirements (1 and 2 above) must submit an Audit Status Notification Letter that certifies these exemptions. The template Audit Status Notification Letter and further instructions are available at <http://www.michigan.gov/mdhhs> by selecting Inside MDHHS menu, then MDHHS Audit, then Audit Reporting.

b. Due Date and Where to Send

The required audit and any other required submissions (i.e. Corrective Action Plan and management letter with a response), or Audit Status Notification Letter must be submitted to the Department within nine months after the end of the Contractor's fiscal year by e-mail to the Department at MDHHS-AuditReports@michigan.gov. The required submissions must be in PDF files and compatible with Adobe Acrobat (read only). The subject line must state the agency name and fiscal year end. The Department reserves the right to request a hard copy of the audit materials if for any reason the electronic submission process is not successful.

c. Penalty

Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

d. Other Audits

The Department or federal agencies may also conduct or arrange for "agreed upon procedures" or additional audits to meet their needs.

2.14. Cost Reporting

The Contractor shall submit annual financial cost reports based on the state's fiscal year which begins October 1 and ends September 30 in the following calendar year. The reports shall contain the actual costs incurred by providers in delivering services required in this agreement to MDHHS clients for the reporting period. Costs for non-MDHHS children are not to be included. Reports will be submitted using a template provided by MDHHS. The financial reports shall be submitted annually, and will be due November 30 of each fiscal year. The Contractor must comply with all other program and fiscal reporting procedures as are or may hereinafter be established by MDHHS. Reports shall be submitted electronically to MDHHS-Foster-Care-Audits@michigan.gov with the subject line: PAFC Actual Cost Report. Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

Agreement Number: PAFC15-33001
Amendment Number: 3

2.15. Service Documentation

The Contractor agrees to maintain program records required by MDHHS, program statistical records required by MDHHS, and to produce program narrative and statistical data at times prescribed by, and on forms furnished by, MDHHS.

2.16. Private Agency MiSACWIS

The Contractor shall ensure that private agency payment staff has access to the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) through a web-based interface, henceforth referred to as the "MiSACWIS application." Requirements for MiSACWIS for CPA contracts may be found at http://www.michigan.gov/mdhhs/0,5885,7-339-71551_7199--,00.html

For all agency assigned cases in MiSACWIS, the Contractor shall enter all case management activities, including payments and all required documentation per policy in MiSACWIS.

2.17. Billing

The Contractor shall submit through the MiSACWIS system the bi-weekly roster for any child in the Contractor's care per the instructions within the MiSACWIS system. The billing shall indicate the units of service provided by the Contractor and shall be submitted to MDHHS within 30 days from the end of the billing period.

No original request for payment submitted by the Contractor more than three years after the close of the two week billing period during which services were provided shall be honored for payment.

When the Contractor's financial records reveal that payment for a child has not been provided by MDHHS within 90 days of the date of service, the Contractor will seek payment resolution by contacting the direct supervisor of the assigned MDHHS worker in writing. Any concerns over a payment authorization or issuance that cannot be resolved within 60 days of the written notice must be reported to the MDHHS County Director for immediate resolution. The Contractor will apprise MDHHS of any ongoing, unresolved payment concerns.

2.18. Fees and Other Sources of Funding

The Contractor guarantees that any claims made to MDHHS under this Agreement shall not be financed by any source other than MDHHS under the terms of this Agreement. If funding is received through any other source, the Contractor agrees to deduct from the amount billed to MDHHS the greater of either the fee amounts, or the actual costs of the services provided.

Agreement Number: PAFC15-33001

Amendment Number: 3

The Contractor may not accept reimbursement from a client unless the Agreement specifically authorizes such reimbursement in the "Contractor Responsibility" Section. In such case, a detailed fee scale and criteria for charging the fee must be included. If the Contractor accepts reimbursement from a client in accordance with the terms of the Agreement, the Contractor shall deduct these fees from billings to MDHHS.

Other third party funding sources, e.g., insurance companies, may be billed for contracted client services. Third party reimbursement shall be considered payment in full unless the third party fund source requires a co-pay, in which case MDHHS may be billed for the amount of the co-pay. No supplemental billing is allowed.

2.19. Recoupment of Funding and Repayment of Debts

a. Recoupment of Funding

If the Contractor fails to comply with requirements as set forth in this Agreement, or fails to submit a revised payment request within allotted time frames established by MDHHS in consultation with the Contractor, MDHHS may, at its discretion, recoup or require the Contractor to reimburse payments made under this Agreement which MDHHS has determined that the Contractor has been overpaid. The Contractor is liable for any cost incurred by MDHHS in the recoupment of any funding.

Upon notification by MDHHS that repayment is required, the Contractor shall make payment directly to MDHHS within 30 days or MDHHS may withhold current or future payments made under this or any other agreements, current or future, between MDHHS and the Contractor.

If the Contractor fails to: (1) correct noncompliance activities identified by MDHHS, (2) submit revised billings as requested as part of a Corrective Action Plan when required; or (3) remit overpayments or make arrangements to have the overpayments deducted from future payments within 30 days, such failure shall constitute grounds to terminate immediately any or all of MDHHS' agreements with the Contractor. MDHHS shall also report noncompliance of the Contractor to Michigan's Department of Technology, Management and Budget. Such report may result in the Contractor's debarment from further contracts with the state of Michigan.

b. Repayment of Debts and Other Amounts due MDHHS

By entering into this Agreement, the Contractor agrees to honor all prior repayment agreements established by MDHHS with the Contractor or Contractor's predecessors. If the Contractor has an outstanding debt due to MDHHS but does not have a repayment agreement, the Contractor agrees to

Agreement Number: PAFC15-33001

Amendment Number: 3

make monthly payments to MDHHS at an amount not less than 5% of any outstanding balance and to begin on the date this Agreement is executed.

If the Contractor fails to honor prior repayment agreements, or the Contractor fails to begin repayment on an obligation due MDHHS that is not subject to a repayment agreement, MDHHS will initiate the administrative process to reduce payments to the Contractor under this Agreement to recoup the debt. The payment reduction will be made at the amount originally established in the repayment agreement or at an amount not less than 5% of any outstanding balance effective on the date this Agreement is executed.

2.20 Child Protection Law Reporting Requirements

- a. The Contractor shall ensure that all employees who have reasonable cause to suspect child abuse or neglect shall report any suspected abuse or neglect of a child in care to MDHHS for investigation as required by Public Acts of 1975, Act Number 238.
- b. Failure of the Contractor or its employees to report suspected abuse or neglect of a child to MDHHS shall result in an immediate investigation to determine the appropriate corrective action up to and including termination of the contract.
- c. Failure of the Contractor or its employees to report suspected child abuse or neglect two or more times within a one-year period shall result in a review of the contract agency's violations by a designated Administrative Review Team, which shall include the Director of CSA and the Director of DCWL or its successor agency, that shall consider mitigating and aggravating circumstances to determine the appropriate corrective action up to and included license revocation and contract termination.

2.21 The Division of Child Welfare Licensing (DCWL)

DCWL shall be responsible for review of the Contractor's compliance with the Agreement and any court orders, via an Annual Compliance Review (ACR) and Special Investigations. DCWL may review, analyze and comment on all activities covered within the terms of the Agreement or court order. If the ACR or Special Investigation reveals that the Contractor has not complied with the requirements of this Agreement or court order, the following procedures shall be implemented:

- a. DCWL shall notify the Contractor of the Agreement or court noncompliance. This notification shall occur verbally during an exit conference, and be followed with a written report of the findings. The Contractor may request a meeting to discuss and examine the identified Agreement or court noncompliance.

Agreement Number: PAFC15-33001

Amendment Number: 3

- b. Following the identification of the Agreement or court noncompliance, DCWL will request the Contractor submit a Corrective Action Plans (CAP) to DCWL within 15 days of receiving the written report of findings.
- c. After the Contractor's CAP has been reviewed and approved by DCWL, the Contractor's compliance with the CAP shall be reviewed in accordance with time frames established by DCWL in the written notification of acceptance of the CAP.
- d. Based on the severity or repeated nature of cited violations, a recommendation may be made by DCWL at any time to place a moratorium on new placements with the contractor or to cancel the contract. If either recommendation is made, a meeting will be convened with the director of the contracted agency, the division director of DCWL and the CSA director or designee to provide the contractor with the opportunity to provide documented information on why the moratorium or cancellation of the contract should not occur.
- e. If a moratorium on new placements is put into place, it shall be for a minimum of 90 days to allow the contractor to remedy cited violations and comply with any agreed on CAP. If the cited violations are not corrected during the period of the moratorium or additional serious violations are cited, consideration shall be given to cancellation of the agency's contract. Final decisions regarding the cancellation of a contract shall be made by the CSA director.

2.22 Corrective Action Requirements

If a program review by MDHHS reveals a lack of compliance with the requirements of this Agreement, the Contractor shall:

- a. Meet with MDHHS to discuss the noncompliance.
- b. Prepare a corrective action plan within 30 days of receiving MDHHS' written findings.
- c. Achieve compliance within 60 days of receipt of MDHHS' approval of the corrective action plan (unless other time frames are agreed to in writing by MDHHS) or MDHHS may terminate this Agreement, subject to the standard contract terms.

3. MDHHS RESPONSIBILITIES

3.1. Payments

MDHHS shall open and process payment within 30 days of placement, with payment authorization effective the date of the child's placement with the Contractor.

Agreement Number: PAFC15-33001

Amendment Number: 3

- a. The entire rate paid to the Contractor for board and care, clothing and allowance shall be paid by the Contractor to the foster families providing the family foster care.
- b. The Contractor's administrative rate(s) for services provided under this Agreement shall be:

Bridges Provider Number 6356725
 MiSACWIS Provider Number 10400303

<u>Service Code</u>	<u>Per Diem Rate</u>	<u>Effective Date</u>
780	\$40.00	06/01/15
782	\$28.00	10/01/13
TR	\$37.00	10/01/13
0838	*\$2.50	10/01/13

*The above rate is only to be used for American Indian Children

If the Contractor has an adoption agreement with MDHHS and fails to register a child on the Michigan Adoption Resource Exchange (MARE) as required in that agreement, the Contractor's Foster Care administrative rate for that child shall be reduced by 20% until the child is registered.

The contractor will receive reimbursement subject to appropriations for relative licensure as outlined in that years State fiscal appropriation.

If a Contractor does not submit the financial cost reports as described in Section 2., CONTRACTOR RESPONSIBILITIES, the per diem administrative rate shall be reduced by \$3.00 until contractor becomes compliant with the reporting requirements.

- c. The Contractor shall be paid for family foster care services specified in this Agreement at a board and care rate established by MDHHS. A determination of care rate may be established by MDHHS in accordance with the FOM when extraordinary care or expense is required of the foster parent. Special rates must have the approval of the Director of MDHHS' local office responsible for the supervision of the child for whom foster care is provided.
- d. Payment for additional service costs not included in the per diem rate may be authorized in accordance with the FOM.

When the Contractor's financial records reveal that a payment for a child has not been provided by MDHHS within 90 days of their acceptance of the child for case management services, the Contractor will contact the MDHHS County Director in writing seeking payment resolution. The Contractor shall

Agreement Number: PAFC15-33001

Amendment Number: 3

apprise MDHHS of any concerns over a payment amount that cannot be reconciled at the staff level within 90 days.

- e. Upon placement, MDHHS shall ensure that the child(ren) has adequate clothing as defined by the Clothing Inventory Checklist (DHS-3377) or shall reimburse the Contractor up to the approved limit allowed for clothing.
- f. Inability of MDHHS to comply with the federal reporting requirements of AFCARS due to failure of the Contractor to fulfill AFCARS related reporting requirements shall result in a three percent reduction in the Contractor's administrative rate for the six month period subsequent to the due date of the AFCARS report to the Federal government.
- g. Foster Care Training Payments

Payments will be made for eligible training which commenced after January 1, 2012.

A payment will be made to the Contractor for each staff that completes training and passes competency tests as required in the Implementation, Sustainability and Exit Plan according to the following schedule:

1) Completion of the Child Welfare Caseworker Training

Payment will be \$6,000.00 total, calculated on a per diem basis, for completion of CWTI-PSI that includes a minimum of 9 weeks of competency-based classroom and field training if the caseworker passes the competency evaluation within 16 weeks of hire.

2) Completion of the Child Welfare Certificate (CWC) Training

Payment will be \$3,000.00 total, calculated on a per diem basis, for completion of the CWTI-CWC that includes a minimum of five weeks of competency-based classroom and field training if the caseworker certified certificate holder passes the competency evaluation.

3) Completion of the Child Welfare Supervisor Training

Payment will be \$1,500.00 total, calculated on a per diem basis, for completion of the Supervisor Training that includes a minimum of one week within 90 days of hire/promotion, if the supervisor passes the competency evaluation.

4) Completion of the Child Welfare Transfer Training

Agreement Number: PAFC15-33001

Amendment Number: 3

The two week foster care PSTT shall be completed within six months of hire.

Payment will be \$2,800.00 for the completion of the foster care PSTT training. The training is the same as the Foster Care Core Training for Foster Care caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated.

h. For all Contractor staff hired on or after May 1, 1998 attending required CWTI-PSI, PSTT, and supervisor training, MDHHS-CWTI shall reimburse the Contractor at the Contractor's normal rate of reimbursement or State rates, whichever is less for staff trainee expenditures incurred as part of CWTI attendance. MDHHS-CWTI does not cover travel reimbursement for in-service training. Travel reimbursement shall be limited to lodging, mileage and parking with the following conditions:

- 1) For each trainee who attends the training session, MDHHS shall reimburse the Contractor up to five nights lodging per week if lodging expense is incurred. If training continues for two consecutive weeks or longer and the cost of lodging is less than the mileage cost to travel to and from the Contractor's facility over the intervening weekend, the Contractor may request the director of Office of Workforce Development and Training in advance for a travel exception for weekend lodging.
- 2) For each mile of travel to a CWTI training session closest to the Contractor's site, MDHHS shall reimburse the Contractor for mileage to and from the training and the trainee's assigned work location or home, whichever is closer. The applicable State rate for mileage shall be the lesser of the Contractor's prevailing rate or the State's standard rate.
- 3) Parking shall be reimbursed at actual cost, documented with a receipt.
- 4) MDHHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from DCWL. Refer to the CWTI web site for current reimbursement information for CWTI training at <http://www.michiganchildwelfaretraining.com/Training/Travel.aspx>

Classroom Training Payment

- 1) The Contractor must submit a signed and dated agency letterhead memo attached to the DHS-1582 Payment Voucher that includes the following information:

Agreement Number: PAFC15-33001

Amendment Number: 3

- a) Worker name
 - b) Training, type, i.e. PSST, PSI etc.
 - c) Training dates (time span in training)
 - d) Amount of reimbursement requested.
 - e) A copy of the transcript reflecting the completion of the training for each foster care worker and supervisor covered by the payment voucher. This is required before accounting will issue payment.
 - f) Memo signed by senior management; not the individual who attended training.
- 2) The information must be submitted electronically to: MDHHS-FederalComplianceDivision@michigan.gov. The subject line shall read: Training Payment.

Training Travel Reimbursement

- 1) The Contractor must submit:
 - a) Certification letter on agency letterhead signed and dated by senior management to include:
 - Agency Federal ID Number
 - Exact trainee name as registered in OmniTrack Plus (formerly JJOLT)
 - Exact class name
 - Beginning and ending travel dates
 - Amount of reimbursement requested
 - b) DHS-1582 Payment Voucher.
 - c) DHS-1582 TV-NSE for each trainee.
 - d) MapQuest (or equivalent) printouts for each travel route.
 - e) All original receipts.
 - f) Transcripts showing the training completed.
- 2) Please submit the above information to:

Ingham County MDHHS/OWDT
Attention: Travel Reimbursement
PO Box 30088
5303 S. Cedar Street
Lansing, MI 48911
- i. The Contractor shall be paid for Trial Reunifications services specified in the agreement not to exceed 180 days from the child's placement in the parental home.
- 1) The Contractor must submit the following on a monthly basis:
 - a) A completed DHS-1582 CS Payment Voucher

Agreement Number: PAFC15-33001

Amendment Number: 3

- b) A case listing that contains the following child identifying information:
- Placing Agency Provider ID
 - Agency Name
 - MiSACWIS log ID if known
 - Child last name
 - Child first name
 - Recipient ID
 - Foster Care case number
 - Billing start date
 - Billing end date
 - Number of days to pay
 - American Indian Y/N
 - Date of court order commencing the Trial Reunification
 - Date the foster care case was dismissed by the court and/or
 - Date the child reentered a foster care placement

- 2) The information must be submitted electronically to: MDHHS-trialreunificationpayments@michigan.gov.

- j. The costs of all services provided under this Agreement are included in the above rate(s) unless otherwise noted in this Agreement.

3.2. Performance Evaluation and Monitoring

The services provided by the Contractor under this Agreement shall be evaluated and assessed at least annually by MDHHS on the basis of the criteria outlined in Section 2.11.

MDHHS shall perform contract monitoring through activities such as:

- a. Auditing expenditure reports.
- b. Conducting on-site monitoring.
- c. Reviewing and analyzing reports.

Article VI

In Section III GENERAL PROVISIONS – PRIVATE, NON-PROFIT AND PRIVATE PROPRIETARY, shall be renamed Section 4 and C., Subcontracts and W., Indemnification, shall be deleted and replaced with:

C. Subcontracts

Contractor may not delegate any of its obligations or subcontract under this Agreement without the prior written approval of MDHHS. Contractor must

Agreement Number: PAFC15-33001

Amendment Number: 3

notify MDHHS prior to the proposed delegation, and provide MDHHS 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 Agreement Activities;
- b. Make all payments to the subcontractor; and
- c. Incorporate the terms and conditions contained in this Agreement in any subcontract with a subcontractor.

Contractor remains responsible for the completion of the Agreement Activities, compliance with the terms of this Agreement, and the acts and omissions of the subcontractor. MDHHS, in its sole discretion, may require the replacement of any subcontractor.

W. General Indemnification

Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to:

- a. Any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Agreement;
- 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).

MDHHS 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 MDHHS, demonstrate its financial ability to carry out these obligations.

MDHHS is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if MDHHS deems necessary. Contractor will not, without

Agreement Number: PAFC15-33001

Amendment Number: 3

MDHHS's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, MDHHS may, at its own expense, control the defense of that portion of the claim.

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

EXHIBIT 9

AGREEMENT NUMBER: A17-33001

AMENDMENT NUMBER: 1

Between

THE STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES

And

CONTRACTOR	St Vincent Catholic Charities
CONTRACTOR ADDRESS	2800 West Willow, Lansing, MI 48917-1833
CONTRACTOR EMAIL	seykaa@stvcc.org

CONTRACT ADMINISTRATOR	EMAIL
Cathe Hoover	Hooverc3@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Adoption		
GEOGRAPHIC AREA	Statewide		
INITIAL EFFECTIVE DATE	October 1, 2016	CURRENT EXPIRATION DATE	September 30, 2019
CURRENT AGREEMENT VALUE	\$1,150,000.00		
AGREEMENT TYPE	Unit Rate		

AMENDMENT DESCRIPTION			
EXTEND EXPIRATION DATE	☐ YES	☒ NO	NEW EXPIRATION DATE
AMENDMENT AMOUNT	ESTIMATED REVISED AGGREGATE AGREEMENT VALUE		
\$	☐ INCREASE	☐ DECREASE	\$1,150,000.00
NATURE OF CHANGE	This amendment changes language in the agreement.		

The undersigned have the lawful authority to bind the Contractor and the Michigan Department of Health and Human Services (MDHHS) to the terms set forth in this Agreement.

FOR THE CONTRACTOR:

St Vincent Catholic Charities

Contractor

Signature of Director or Authorized Designee

Print Name

Date

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN
SERVICES

Signature of Director or Authorized Designee

Christine H. Sanches

Print Name

Date



Agreement Number: A17-33001
 Amendment Number: 1

<u>Agreement Period</u>	<u>Amount</u>
October 1, 2016 through September 30, 2019	\$1,150,000.00
Total Amount:	\$1,150,000.00

Check all agreement years affected by this amendment:

☒ Year 1	☒ Year 2	☒ Year 3
☐ Year 4	☐ Year 5	☐ Year 6

**STATE OF MICHIGAN
 DEPARTMENT OF HEALTH AND HUMAN SERVICES**

WHEREAS, the Michigan Department of Health and Human Services (hereinafter referred to as "MDHHS") entered into a contractual Agreement effective October 1, 2016, with St Vincent Catholic Charities (hereinafter referred to as "Contractor"), having a mailing address of 2800 West Willow, Lansing, MI 48917-1833, for the provision of certain services as set forth therein; and,

WHEREAS, it is mutually desirable to MDHHS and to the Contractor to amend the aforesaid Agreement.

THEREFORE, in consideration of the promises and mutual covenants hereinabove and hereinafter contained, the parties hereto agree to the following amendment of said Agreement. This amendment shall be attached to the Agreement, said Agreement being hereby reaffirmed and made a part hereof.

Article I

This amendment shall be effective on the date of MDHHS signature.

Article II

In Section 2., CONTRACTOR RESPONSIBILITIES, Item 2.9., Compliance Requirements, c., Item 2.10., Services to be Provided, c., MARE Related Responsibilities, e., Staff Training, Item 2.11., Expected Performance Outcomes, Item 2.17., Billing shall be deleted and replaced with:

2.9 Compliance Requirements

- c. The Contractor shall comply with the MDHHS non-discrimination statement:

Agreement Number: A17-33001

Amendment Number: 1

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs or disability.

The above statement applies to all MDHHS supervised children, and to all applications filed for adoption of MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

2.10 Services to be Provided

c. MARE Related Responsibilities

The Contractor shall cooperate with MARE related activities and responsibilities, as detailed in this document including but not limited to:

- 1) The Contractor shall register children with MARE per policy timeframes and requirements.
- 2) The Contractor shall appropriately inform and prepare children concerning the process of photo listing. Children shall be adequately attired and well groomed. Adequately attired is defined as that which a parent would provide for their child in a school photo. The Contractor is responsible for securing photography services and may request coupons or assistance from the MARE office. The Contractor is responsible for facilitating transportation to key photo sites and supervision of the child (ren) during the process.
- 3) The Contractor shall, as appropriate to the child's ability, involve youth over age nine (9) in developing individual recruitment materials and narratives for MARE photo listing.
- 4) The Contractor must submit a copy of the Order Placing Child after Consent and the Order of Adoption to the MARE office within ten (10) working days of issuance by the court.
- 5) Upon determination by the Contractor that the MARE potential family 'match' is appropriate, the child and family agencies shall begin the process towards adoption within ten (10) working days.
- 6) The Contractor shall provide a written brochure (developed by MARE) to adoptive families regarding their right to be included in the MARE prospective family registry and provide an explanation of this process during orientation. This brochure and information shall again be provided to the prospective family during the formal training process.

Agreement Number: A17-33001

Amendment Number: 1

- 7) The Contractor shall ensure all age appropriate youth available for adoption have knowledge of and access to the MARE newsletter for youth.
 - 8) The Contractor shall notify MARE no less than quarterly of planned adoption related events, scheduled or tentatively scheduled for the next quarter. These activities shall include but are not limited to orientation, training dates, workshops, adoption fairs, recruitment activities, post adoption support activities and guest speakers. The Contractor will indicate if the events are open to the public or limited to a specific audience and any costs for family participation.
 - 9) If the local court is participating, the Contractor shall cooperate with MARE during planning and implementation of National Adoption Day activities and regionally based adoption events.
 - 10) The Contractor shall ensure MARE staff has access to case records, the child, child's worker, and other material or persons necessary for the development and updating of the child's MARE file and recruitment material.
 - 11) The Contractor shall submit the completed Disruption/Dissolution survey to MARE within thirty (30) days of receipt of the survey from MARE.
 - 12) The Contractor shall provide to MARE by October 30th of each year the following:
 - a. The address of all offices.
 - b. Names, telephone numbers and email addresses of all adoption workers and supervisors.
 - c. Types of services provided by the Contractor.
 - 13) The Contractor shall ensure that a supervisor attends the regionally based MARE sessions on changes to MARE processes and services. This individual shall then be responsible to disseminate MARE information and material to appropriate agency staff.
- e. Staff Training
- 1) Pre-Service Institute: Requirements
- The Contractor shall ensure that staff transferring to an adoption social service position from another children's services position that has successfully completed the Office of Workforce Development and Training

Agreement Number: A17-33001

Amendment Number: 1

(OWDT) Pre-Service Institute (PSI) training in that program, shall attend and complete Adoption Program Specific Transfer Training (PSTT) within six months of assuming the adoption position.

2) OWDT Registration Process

- a) The Contractor shall register all staff required to attend training by each individual staff member through the Learning Management System.
- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To cancel or change training registration, the Contractor will need to directly contact OWDT by telephone or email.
- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by MDHHS at least seven days before the training commences.

3) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

4) Completion of Security Awareness Training (SAT)

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who is authorized to have access to client fingerprint-based criminal history record information (CHRI) under this Agreement to successfully complete security awareness training (SAT) within six months of appointment to a position with (CHRI) access and every two years thereafter. Documentation of successful SAT completion is to be located in the personnel record.

Security awareness training is located through the Learning Management System or on the following link: http://www.michigan.gov/mdhhs/0,5885,7-339-71551_11120_74572---.00.html

5) Minimum in-service training

The Contractor shall ensure that each social services staff receives a minimum of 32 hours of qualifying in-service training on an annual basis. The Contractor shall ensure that each social service supervisor receives a minimum of 16 hours of qualifying in-service training on an annual basis. All qualified training shall be training that improves child welfare practice.

Agreement Number: A17-33001
Amendment Number: 1

2.11 Expected Performance Outcomes

During the Agreement, the Contractor shall demonstrate measurable progress toward the achievement of the outcomes listed below:

- a. Fewer than 5% of placements for adoption will end in disruption.
- b. Fewer than 5% of finalized adoptions will end in dissolution.
- c. By September 30th of the fiscal year, not less than 80% of the number of children with a goal of adoption who were legally free for adoption on September 30th of the previous fiscal year, shall have adoptions finalized.
- d. By September 30th of the fiscal year, not less than 80% of the number of children with a goal of adoption who were legally free for adoption on September 30th of the previous fiscal year will have the adoption petition filed with the court.

2.17. Billing

The Contractor shall maintain a record system that documents the total number of units of service as defined in this Agreement and delivered during the term of this Agreement. These records shall also document the specific units billed to MDHHS under this Agreement.

The Contractor shall submit a DHS-1582A to:

Michigan Department of Health and Human Services
Office of Child Welfare Policy and Programs
Suite 514 PO Box 30037
Lansing, MI 48909

The DHS-1582A shall indicate the title of the service provided and the pre adoptive and adoptive name, case ID and date of birth of the child served. The DHS-1582A and any subsequent corrections must be completed and received in the Office of Child Welfare Policy and Programs within 120 days of the date of the placement or finalization, whichever is applicable, as those terms are defined in Section I(M)(2-3) of this Agreement.

- a. Billing for all designated services including: per diem, placement, finalization, permanency, and disruptions, require a copy of the Order Terminating Parental Rights (Permanent Court Ward/Commitment), the signed DHS3600 for cases referred on or after May 2016, or earlier if

Agreement Number: A17-33001
Amendment Number: 1

applicable, and with the exception of per diems, the signed and dated documentation by the court (DHS 5308 or petition date stamped from the court) verifying the date that the court has accepted the adoption petition and support documentation .

- b. The MARE rates require a copy of the MARE photo listing and the subsequent MARE "Hold" document.
- c. The Residential rate requires a copy of the discharge summary from the residential facility and a copy of the placement record including placement with the prospective adoptive parent prior to filling the petition.
- d. Billing for finalizations requires a copy of the Order of Adoption.
- e. Billing for placement requires a copy of the referral/acceptance form (signed DHS 3600 for cases referred on or after May 2016, or earlier if applicable), Order Terminating Parental Rights and the Order Placing Child.
- f. Disruptions require an Ex Parte Order, or order dismissing, a copy of the initial placement order, initial commitment order, documentation verifying the medical condition of the family member if appropriate, a copy of the placement check and agency disruption report.
- g. Legal Risk–Order Placing Child Filed: In cases where a birth parent, individually or through an attorney, has filed a petition to appeal the termination of parental rights, the Contractor shall include a copy of the Claim filed in conformity with MCR7.203 when requesting payment at placement and a copy of the appeal decision order when requesting payment at finalization.
- h. When billing for the per diem, each payment voucher shall be child specific. Attached to the initial payment voucher the following documents must be included: the DHS-3600 (for Adoption Services) with the date of acceptance indicated, the signed agreement of intent to adopt by a relative or identified family (for matched cases only) and verification from MARE that a complete photo listing or a complete "hold" registration was submitted on the case. The Contractor shall identify in Box 13 of the payment voucher the number of days covered, date range, and the number of per diem billings submitted on behalf of the child.
- i. When requesting an exception to the payment rate, it is the responsibility of the Contractor to demonstrate that requests for adoption assistance eligibility determination or MCI consent delayed the adoption placement.

Agreement Number: A17-33001
 Amendment Number: 1

If the delay was caused by submission of incomplete paperwork or a lack of response to requests for information, the consideration for exception will be denied. There is a thirty (30) day standard of promptness for adoption assistance eligibility determinations and MCI regular and expedited consent requests and a ninety (90) day standard of promptness for MCI consent requests on competing parties. If information is missing, incomplete, or unclear and needing follow-up, the standard of promptness timeframe will not begin until all needed information is available for review, including legal documents and information needed to fulfill policy requirements. The Adoption Payment Exception Request, DHS 832 form must be submitted with the completed DHS-1582A.

- j. The ICPC rate(s) require copies of the ICPC referral, DHS-3600 (for Adoption Services), adoptive family home study, adoption supervision reports (if applicable), Order Terminating Parental Rights (Permanent Court Ward/Commitment), Adoption Petition documentation and Order of Adoption, if applicable.
- k. Billings for competing parties, in which the case would be eligible for a rate less than the Baseline rate and the Contractor is requesting the Baseline rate, requires the Contractor to submit a Competing Party Rate Exception Request (DHHS-5445) and copies of the case acceptance documentation, dates of the initial inquiry, adoption application and DHS-4809 from each competing party and copies of the assessment for each competing party.

Article III

In Section 3., MDHHS RESPONSIBILITIES, Item 3.1., Payment and Item 3.2., Performance Evaluation and Monitoring shall be deleted and replaced with:

3. MDHHS RESPONSIBILITIES

3.1. Payment

MDHHS shall make payments to the Contractor pursuant to MCL 17.51-17.57 and State of Michigan Financial Management Guide, Part II-Accounting and Financial Reporting, Chapter 25, Section 100, "Prompt Payment for Goods and Services."

- a. MDHHS shall make the following payments to the Contractor:

Rate Category	Placement	Finalization	Permanency
Early Adoption Level 2	\$6,900	\$3,450	\$1,150

Agreement Number: A17-33001

Amendment Number: 1

Early Adoption Level 1	\$6,000	\$3,000	\$1,000
Baseline	\$5,400	\$2,700	\$900
Late Adoption Level 1	\$4,800	\$2,400	\$800
Late Adoption Level 2	\$3,000	\$1,500	\$500
Late Adoption Level 3	\$2,400	\$1,200	\$400
Late Adoption Level 4	\$1,800	\$900	\$300
MARE	\$12,240	\$6,120	\$2,040
Residential	\$7,980	\$3,990	\$1,330
In-State Transfer Services	\$3,000		
Inter-State Existing Services	\$3,000		
Inter-State New Services	\$3,500		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoptive Home Study Denial	\$2000		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoptive Home Study Approval	\$2000		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoption Supervision with applicable reports	\$500 at Placement \$500 at Finalization		

b. Per Diem Payments

For each child where the adoption case is referred to the Contractor by MDHHS, the Contractor shall receive payment of \$20.00 per diem for each day of adoptive services from acceptance of the case (DHS 3600 for cases referred on or after October 2016, or earlier if applicable) to the date of the signed documentation from the court (DHS 5308 or petition date stamped by the court) verifying that the court has accepted the petition and support documentation, or for one hundred fifty (150) days, whichever comes first. The maximum per diem payment amount per child is \$3,000.

For adoption cases referred on or after October 2016, the Contractor may bill for the full per diem amount of \$3,000. In the event that the Contractor receives the full per diem amount on a case which is not assigned to the Contractor for 150 days, the Contractor will be responsible for repayment of

Agreement Number: A17-33001

Amendment Number: 1

the per diem at a rate of \$20.00 for each day in which they received a per diem payment and were no longer assigned to the case.

All per diem payment requests must include verification from MARE that either a complete photo listing or a complete hold registration was submitted to MARE on the case.

Payment of the initial placement rate: the total of all per diem payments for each child shall be deducted from the applicable placement rate to be paid.

c. Adoption Training Payments

The Contractor must submit the following with the completed DHS-1582A to the Office of Child Welfare Policy and Programs in central office:

- 1) A copy of the transcript reflecting the completion of the CWTI pre-service training for each adoption worker.
- 2) A statement confirming that 50% of the adoption worker's caseload will be children in the MDHHS foster care system.

d. Placement Disruption

Payment after Placement for adoptions ending in disruption will only be made in the following cases:

- 1) Disruption Due to Medical Condition of Prospective Family Member: If the adoptive family experiences a documented chronic medical condition requiring long term care or a condition anticipated to result in the death of a family member after the adoptive placement of a child, the Contractor shall be eligible for a per-diem rate. The payment shall be a portion of the appropriate rate for finalization, which shall be established by dividing the duration (number of days) of the adoptive placement until disruption by 182 days. The disruption rate shall not exceed the rate that would have otherwise been paid had finalization occurred.
- 2) Death of an Adoptive Child: In cases where a child dies between order placing in the adoptive home and the final order of adoption, the Contractor shall be eligible for a per-diem from the date of placement to the date of death (unless cause of death is determined to be neglect or abuse) not to exceed the rate that would have otherwise been paid had finalization occurred.
- 3) Disruption after Order Placing Child in the adoptive home: When the

Agreement Number: A17-33001

Amendment Number: 1

disruption order is issued more than 182 days from the date of the order placing the child in the adoptive home, the Contractor shall be paid the full finalization rate.

- 4) Disruption of Placement Determined by MCI Superintendent: In a case where the child is placed in a home based on the decision of the MCI Superintendent, against the recommendation of the Contractor, the Contractor shall be eligible for a per-diem rate. The payment shall be a portion of the appropriate rate for finalization, which shall be established by dividing the duration (number of days) of the adoptive placement until disruption by 182 days. The disruption rate shall not exceed the rate that would have otherwise been paid had finalization occurred. Payment for subsequent placements will not reflect a disruption.

e. Adoption Dissolution

MDHHS shall recover, from the Contractor, the Permanency Unit Rate for adoptions that end in dissolution within 182 days of issuance of an Order of Adoption.

f. Payment – Re-Placement of Child after Disruption by Same Contractor

Re-placement of child photo listed on MARE or from a Residential facility:

Subsequent adoptive placement and finalization by the same Contractor (that placed the child in the disrupted/dissolved home) for a child previously reimbursed at one of the MARE rates or the Residential rate, shall not exceed the Baseline rate for a second adoptive placement/finalization. The maximum rate for any re-placement of a child photo listed on MARE or from a Residential facility beyond the second placement shall not exceed the Late Adoption Penalty Level 3 rate if paid to the same Contractor.

Re-placement by the same Contractor of a child under any rate other than a MARE or Residential rate shall not exceed the Baseline rate.

Exceptions may be made to the re-placement rate. The Contractor must submit documentation of efforts that were required to prepare a child for subsequent placement and the recruitment of an adoptive family. Submit request for exceptions to the Adoption Analyst in MDHHS Central Office and stipulate the rate requested.

g. Unit Definitions

- 1) Unit Title: Per Diem Payments

Agreement Number: A17-33001
Amendment Number: 1

For each child where the adoption case is referred to the Contractor by MDHHS, the Contractor shall receive payment of \$20.00 per diem for each day of adoptive services from acceptance of the case (signed DHS 3600 for cases referred on or after October 2016, or earlier if applicable) to date of the signed documentation from the court (DHS 5308 or petition date stamped from the court) verifying that the court has accepted the adoption petition and support documentation, or for one hundred fifty (150) days, whichever comes first. The maximum per diem payment amount per child is \$3,000.

The total amount paid for the per diem rate will be deducted from the applicable placement rate when the child is placed for adoption.

The Contractor must submit the signed Individual Service Agreement (DHS-3600) (for Adoption Services) with the effective date indicated, the completed Adoption Payment Voucher (DHS-1582A), verification from MARE that either a complete photo listing or a complete hold registration was submitted to MARE on the case, and the signed DHS-4809 (if applicable).

For adoption cases referred on or after October 2016, the Contractor may bill for the full per diem amount of \$3,000. In the event that the Contractor receives the full per diem amount on a case which is not assigned to the Contractor for 150 days, the Contractor will be responsible for repayment of the per diem at a rate of \$20.00 for each day in which they received a per diem payment and were no longer assigned to the case.

2) Unit Title: Placement

All unit definitions below are based on the length of time from the receipt of the written order from the court terminating all parental rights or, the date on which the DHS-3600 is fully executed, whichever is later, to the date of the signed documentation from the court (DHS 5308 or petition or petition date stamped from the court) verifying that the court has accepted the adoption petition and support documentation.

If the child's goal changes from adoption to another goal and then changes back to the goal of adoption, the Contractor must obtain a new DHS-3600 for adoption services for the updated goal of adoption.

The Contractor must submit the Order Terminating Parental Rights, signed and dated documentation from the court (DHS 5308 or petition date stamped from the court) verifying the date that the court has accepted the adoption petition and support documentation, the Adoption Petition documentation and the Acceptance of Case Transfer

Agreement Number: A17-33001

Amendment Number: 1

documents (DHS3600) if applicable. The document indicating the date of acceptance must be signed by a MDHHS representative as verification. If there was a per diem payment for the case prior to placement the Contractor must note "per diem billed" in box 13 of the DHS-1582A.

3) Unit Title: Finalization

Unit Definition: One unit equals receipt of an Order of Adoption for a child for whom a Placement rate was paid.

4) Unit Title: Permanency

Unit Definition: One unit equals an adoption that does not end in dissolution within 182 days of the issuance of an Order of Adoption. The Permanency Unit Rate shall be paid at the same time as the Finalization Unit Rate. The Contractor will be responsible for repayment of the Permanency Unit Rate for those cases for which the adoption ended in dissolution.

5) Unit Title: Early Adoption – Level 2

Unit Definition: The DHS-5308 or Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court one hundred eighty (180) or fewer days after the date of placement as defined in Subsection 3.1.g11 above.

6) Unit Title: Early Adoption - Level 1

Unit Definition: The DHS-5308 or Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed by the court more than one hundred eighty (180) days but two hundred forty(240) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

7) Unit Title: Baseline

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court more than two hundred forty (240) days, but three hundred (300) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

8) Unit Title: Late Adoption - Level 1

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court more than three hundred (300) days, but three hundred sixty-five (365) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

Agreement Number: A17-33001

Amendment Number: 1

9) Unit Title: Late Adoption - Level 2

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court more than three hundred sixty-five (365) days, but five hundred forty-five (545) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

10) Unit Title: Late Adoption - Level 3

Unit Definition: The Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court more than five hundred forty-five (545) days, but seven hundred thirty (730) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

11) Unit Title: Late Adoption – Level 4

Unit Definition: The Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court more than seven hundred thirty (730) days after the date of placement as defined in Subsection 3.1.g.ii above.

12) Unit Title: MARE

Unit Definition: The Order Placing Child is signed and dated by the court for a child who has been registered for photo listing on MARE.

The Contractor is not eligible for the MARE rate if the Contractor photo lists the child. The exception to allow for payment of the MARE rate to the supervising agency requires the Contractor to submit a written request verifying that the child was photo listed for six (6) months and documentation must be provided to demonstrate the family is a newly approved recruited family and the following conditions are true:

- a. The identified family is not a relative or foster parent to the adoptive child.
- b. The identified family has either not previously provided care for the child or has previously provided care and during the time that the child was photo listed had indicated in writing that they were not interested in adopting the child. The written document from the family must be submitted with the MARE payment request.

The Contractor is eligible for the MARE rate if the child's foster care case remains with MDHHS and, at the time of referral, there was no identified adoptive resource. The Contractor must register the child for photo listing within 30 days of acceptance of the case if no adoptive resource has been identified. If the Contractor applies for the

Agreement Number: A17-33001

Amendment Number: 1

MARE rate there must be a written explanation of why the adoptive family was not identified as a potential adoptive resource within the first 30 days after acceptance of the case.

13) Unit Title: Residential

Unit Definition: The Order Placing Child is signed and dated by the court for a child who has been placed in residential care (defined as staffed institutional care, not including foster group homes) and the child is under the Contractor's supervision for Adoption Services.

14) Unit Title: MARE and Residential Rate with Pre-placement

Unit Definition: When a child photo-listed with MARE or in a Residential facility is placed into a prospective adoptive home through a foster care placement to allow for a period of adjustment and supervision (prior to petition to place for adoption), the reimbursement for the appropriate rate shall be calculated based on the date the pre-placement began.

The MARE, and Residential Rate will be applied when the court signs the Order Placing Child within two hundred seventy (270) days of placing the child in the home for foster care services.

15) Unit Title: In-State Transfer Services

Unit Definition: The Contractor completes satisfactory services requested for pre-placement activities for a child under the supervision of the Contractor and referred for adoptive placement to another contractor or MDHHS local office. The MDHHS monitor for the foster care case shall define satisfactory services.

16) Unit Title: Interstate Existing Services

Unit Definition: A child under the adoption services supervision of the Contractor is referred for adoptive placement through a private or public agency in the state where the adoptive family resides and the child has previously been placed with the family through Interstate foster/relative care prior to termination of parental rights and assignment of an adoption worker.

17) Unit Title: Interstate New Services

Unit Definition: A child under the adoption services supervision of the Contractor is referred for adoptive placement through a private or public agency in the state where the adoptive family resides and the child has not been placed with the family through Interstate foster/relative care prior to termination of parental rights and assignment of an adoption worker.

Agreement Number: A17-33001

Amendment Number: 1

18) Unit Title: ICPC Referred from Other U.S. States

A child under the child welfare system of another ICPC participating state is referred to Michigan for adoption services through ICPC. DHS-3600 (for Adoption Services) is required from the local Michigan county.

19) Unit Title: Competing Parties

More than one party is interested in adopting a particular child or sibling group and is assessed by the contractor in one of the following formats: Preliminary Adoptive Family Assessment, BCAL 3130 Initial Foster Home/Adoption Evaluation, or DHS 612, Adoptive Family Assessment Addendum. The rate paid on a competing parties' case shall not fall below the "Baseline" rate category, unless an agency has failed to act according to the timeframes outlined in policy.

h. Adoption Training Payments

A payment will be made to the Contractor for each staff that completes adoption training and passes competency tests as required:

1) Completion of the Caseworker Training

Payment will be \$6,000 for completion of a MDHHS Pre-Service Institute training that includes a total of nine weeks of competency-based classroom and field training within 16 weeks of hire.

2) Completion of the Child Welfare Certificate (CWC) Training

Payment will be a maximum of \$3,000, calculated on an actual cost reimbursement basis, for completion of the Office of Workforce Development and Training (OWDT)-CWC training. This training includes a minimum of five weeks of competency-based classroom, and field training if the caseworker certificate holder passes the competency evaluation.

3) Completion of the Child Welfare Supervisor Training.

Payment will be a maximum of \$1500, calculated on an actual cost reimbursement basis for completion of the Supervisor Training. This includes a minimum of one week of training within 90 days of hire/promotion if the supervisor passes the competency-based evaluation including the written exam through OWDT.

All supervisors hired on or after January 1, 2017 must complete the Supervisor Training and pass the competency evaluation.

Agreement Number: A17-33001
Amendment Number: 1

- 4) Completion of the adoption Program Specific Transfer Training (PSTT) within 6 months of hire.

Payment will be a maximum of \$2,800, calculated on an actual cost reimbursement basis for completion of the adoption PSTT training. This training is the same as the Adoption Core Training for adoption caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated. If a supervisor has not completed this training since April 1, 2006, they need to complete this PSTT Training within 6 months of hire.

- i. For all Contractor staff hired on or after May 1, 1998 attending required OWDT-PSI, PSTT, and supervisor training, MDHHS-OWDT shall reimburse the Contractor at the Contractor's normal rate of reimbursement or State rates, whichever is less for staff trainee expenditures incurred as part of OWDT attendance. MDHHS-OWDT does not cover travel reimbursement for in-service training. Travel reimbursement shall be limited to lodging, mileage and parking and bridge toll with the following conditions:

- 1) For each trainee who attends the training session, MDHHS shall reimburse the Contractor up to five nights (Sunday night thru Thursday night) lodging per week if lodging expense is incurred. If training continues for two consecutive weeks or longer and the cost of lodging is less than the mileage cost to travel to and from the Contractor's facility over the intervening weekend, the Contractor may request the director of OWDT in advance for a travel exception for weekend lodging.
- 2) For each mile of travel to an OWDT training session closest to the Contractor's site, MDHHS shall reimburse the Contractor for mileage to and from the training and the trainee's assigned work location or home, whichever is closer. The applicable State rate for mileage shall be the lesser of the Contractor's prevailing rate or the State's standard rate.
- 3) Parking shall be reimbursed at one-time daily parking or continuous daily metered parking actual cost, documented with a receipt.
- 4) MDHHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from DCWL. Refer to the OWDT web site for current reimbursement information for OWDT training at http://www.michigan.gov/mdhhs/0,5885,7-339-71551_11120_74572--,00.html

Agreement Number: A17-33001

Amendment Number: 1

Classroom Training Payment

- 1) The Contractor must submit a signed and dated agency letterhead memo attached to the DHS-1582 Payment Voucher that includes the following information:
 - a) Worker name
 - b) Training, type, i.e. PSST, PSI etc.
 - c) Training dates (time span in training)
 - d) Amount of reimbursement requested.
 - e) A copy of the transcript reflecting the completion of the training for each adoption worker and supervisor covered by the payment voucher. This is required before accounting will issue payment.
 - f) Memo signed by senior management; not the individual who attended training confirming that 50% of the adoption workers caseload will be children in the MDHHS foster care system.
- 2) The information must be submitted to:

MDHHS
Office of Child Welfare Policy & Programs
PO Box 30037
235 S. Grand Ave., Ste. 514
Lansing, MI 48909

Training Travel Reimbursement

- 1) The Contractor must submit:
 - a) Certification letter on agency letterhead signed and dated by senior management to include:
 - i. Agency Federal ID Number
 - ii. Exact trainee name as registered in the Learning Management System
 - iii. Exact class name
 - iv. Beginning and ending travel dates
 - v. Amount of reimbursement requested
 - b) DHS-1582 Payment Voucher.
 - c) DHS-1582 TV-NSE for each trainee.
 - d) MapQuest (or equivalent) printouts for each travel route.
 - e) All original receipts.
 - f) Transcripts showing the training completed.
- 2) Please submit the above training travel reimbursement information to:

Agreement Number: A17-33001
Amendment Number: 1

Ingham County MDHHS/OWDT
Attention: Travel Reimbursement
PO Box 30088
5303 S. Cedar Street – Building 3
Lansing, MI 48911

Or email package to: MDHHS-OWDTtrainingvouchers@michigan.gov

- j. The costs of all services provided under this Agreement are included in the above rate(s) unless otherwise noted in this Agreement.

3.2. Performance Evaluation and Monitoring

The services provided by the Contractor under this Agreement shall be evaluated and assessed at least annually by MDHHS on the basis of the criteria outlined in Section 2.11.

MDHHS shall perform contract monitoring through activities such as:

- a. Auditing expenditure reports.
- b. Conducting on-site monitoring.
- c. Reviewing and analyzing written plans and reports.

EXHIBIT 10

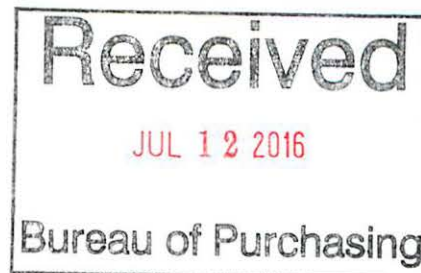
AGREEMENT NUMBER: PAFC15-63011

AMENDMENT NUMBER: 3

Between

THE STATE OF MICHIGAN
DEPARTMENT OF HEALTH AND HUMAN SERVICES

And



CONTRACTOR	Bethany Christian Services
CONTRACTOR ADDRESS	901 Eastern Avenue, NE, PO Box 294, Grand Rapids, Michigan 49501-0294
CONTRACTOR EMAIL	bdv@bethany.org

CONTRACT ADMINISTRATOR	EMAIL
Sarah Goad	GoadS@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Placing Agency Foster Care		
GEOGRAPHIC AREA	Statewide		
INITIAL EFFECTIVE DATE	October 1, 2014	CURRENT EXPIRATION DATE	September 30, 2016
CURRENT AGREEMENT VALUE	\$2,860,000.00		
AGREEMENT TYPE	Unit Rate/Per Diem		

AMENDMENT DESCRIPTION			
EXTEND EXPIRATION DATE	☒ YES		NEW EXPIRATION DATE September 30, 2017
AMENDMENT AMOUNT		ESTIMATED REVISED AGGREGATE AGREEMENT VALUE	
\$1,430,000.00	☒ INCREASE	\$4,290,000.00	
NATURE OF CHANGE	This amendment extends this Agreement for one year, adds money, changes the Agreement format and changes Agreement language that pertains to MDHHS organizational name changes, Cost Accounting, Financial Audit Requirements and Modified Settlement Agreement.		

The undersigned have the lawful authority to bind the Contractor and the Michigan Department of Health and Human Services (MDHHS) to the terms set forth in this Agreement.

FOR THE CONTRACTOR:

Bethany Christian Services

Contractor

A handwritten signature in blue ink, appearing to read "B. De Vos".

 Signature of Director or Authorized Designee
 Brian J. De Vos, Sr. Vice President
 Child and Family Services

Print Name

June 9, 2016

Date

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN
SERVICES

A handwritten signature in blue ink, appearing to read "Kim Stephen".

Signature of Director or Authorized Designee

Kim Stephen

Print Name

7/14/16

Date

Agreement Number: PAFC15-63011

Amendment Number: 3

	<u>Agreement Period</u>		<u>Amount</u>
Year 1	October 1, 2014	through September 30, 2015	\$1,430,000.00
Year 2	October 1, 2015	through September 30, 2016	\$1,430,000.00
Year 3	October 1, 2016	through September 30, 2017	\$1,430,000.00
Total Amount:			\$4,290,000.00

Check all agreement years affected by this amendment:

☐ Year 1 ☒ Year 2 ☒ Year 3
☐ Year 4 ☐ Year 5 ☐ Year 6

**STATE OF MICHIGAN
DEPARTMENT OF HEALTH & HUMAN SERVICES**

WHEREAS, the Department of Health & Human Services of the state of Michigan (hereinafter referred to as "MDHHS") entered into a contractual Agreement effective October 1, 2014, with Bethany Christian Services (hereinafter referred to as "Contractor"), having a mailing address of 901 Eastern Avenue, NE, PO Box 294, Grand Rapids, Michigan 49501-0294, for the provision of certain services as set forth therein; and,

WHEREAS, it is mutually desirable to MDHHS and to the Contractor to amend the aforesaid Agreement.

THEREFORE, in consideration of the promises and mutual covenants hereinabove and hereinafter contained, the parties hereto agree to the following amendment of said Agreement. This amendment shall be attached to the Agreement, said Agreement being hereby reaffirmed and made a part hereof.

Article I

This amendment shall be effective on the date of MDHHS signature.

Article II

MDHHS will exercise the first of two, one-year options to extend. Therefore, the end date of the Agreement shall be changed from September 30, 2016 to September 30, 2017.

Article III

The maximum dollar amount of the Agreement shall be increased by \$1,430,000.00 from \$2,860,000.00 to \$4,290,000.00 for the period October 1, 2014, through September 30, 2017.

Article IV

Agreement Number: PAFC15-63011

Amendment Number: 3

The following are major language changes in this amendment:

1. The amendment contains updates to the general formatting of the contract, and reflects MDHHS organizational name changes and small programmatic changes.
2. The amendment reflects necessary changes related to Dwayne B. v. Snyder, et al., 2:06-cv-13548. Language containing the term Modified Settlement Agreement is replaced with the term Implementation, Sustainability, and Exit Plan (ISEP).
3. The amendment reflects necessary changes related to the Cost Reporting and Financial Audit Requirements.

Article V

Section I., CONTRACTOR RESPONSIBILITIES, and Section II., MDHHS RESPONSIBILITIES shall be deleted and replaced with Number 1., PROGRAM REQUIREMENTS, Number 2., CONTRACTOR RESPONSIBILITIES, and Number 3., MDHHS RESPONSIBILITIES as follows:

1. PROGRAM REQUIREMENTS

1.1. Client Eligibility Criteria

a. Eligible Clients

Children for whom the family court has issued an order which makes the Michigan Department of Health and Human Services responsible for the child's placement, care and supervision.

OR

Children for whom the family court has authorized a placement in the parental home in a Trial Reunification living arrangement.

The period of time eligible for a Trial Reunification shall not exceed 180 days from the date of the child(ren)'s placement in a parental home. Child(ren) must enter Trial Reunification directly from foster care and the family court must retain jurisdiction with care and custody continuing with MDHHS.

b. Determination of Eligibility

If MDHHS makes a referral to a child placing agency for foster care case management services pursuant to a contract with the child placing agency, the child placing agency must accept or decline the referral within one hour of

Agreement Number: PAFC15-63011

Amendment Number: 3

receipt of the referral. If a need for placement is imminent, MDHHS may make referrals for placement concurrently to other contracted providers. Contractor may not transfer a foster care case to another child placing agency. After acceptance of a foster care referral, the Contractor may not refer the case back to the Department except for the reasons outlined in the Children's Foster Care Manual (FOM) or upon the written approval of the County Director, the Children's Services Agency Director, or the Deputy Director.

1.2. Referrals

- a. The Contractor accepts a referral from MDHHS by doing either of the following:
 - 1) Submitting to MDHHS a written agreement to perform the services related to the particular child or particular individuals that the Department referred to the Contractor; or
 - 2) Engaging in any other activity that results in MDHHS being obligated to pay the Contractor for the services related to the particular child or particular individuals that the Department referred to the Contractor.
- b. Upon placement, MDHHS shall provide the Contractor at minimum, with a court order, a Medical Authorization Card (DHS-3762), the Individual Service Agreement (DHS-3600) and all known information about the child and family.

1.3. Legal or Court Related

MDHHS shall involve the Contractor, to the extent allowed by law, in matters relating to any legal or court activities concerning the child while in the Contractor's care. If the Contractor is to be involved in the court proceedings, MDHHS shall provide the Contractor with written reports for court use upon request, subject to confidentiality requirements imposed by statute.

2. CONTRACTOR RESPONSIBILITIES

2.1. Email Address

The Contractor authorizes MDHHS to use the contact information below to send Agreement related notifications/information. The Contractor shall provide MDHHS with updated contact information if it changes.

Contact email address: bdv@bethany.org

2.2. Requests for Information

Agreement Number: PAFC15-63011

Amendment Number: 3

The Contractor may be required to meet and communicate with MDHHS representatives and from time to time MDHHS may require that the Contractor create reports or fulfill requests for information as necessary to fulfill the MDHHS' obligations under statute and/or Dwayne B. v. Snyder, et al., 2:06-cv-13548, herein referred to as the Implementation, Sustainability, and Exit Plan (ISEP).

The Contractor shall make available to MDHHS copies of any outside reviews, non-redacted FOIA requests, or audits relating to the contracted program.

2.3. Geographic Area

The Contractor shall provide services described herein in the following geographic area: Statewide

2.4. Licensing Requirements

The MDHHS Division of Child Welfare Licensing (DCWL) is the licensing agency for Child Placing Agencies (CPA). A license is issued to a certain person or organization at a specific location, is non-transferable, and remains the property of the Department. Therefore, a child placing agency must be established at a specific location.

The Contractor shall ensure that, for the duration of this agreement, it shall maintain a license for those program areas and services that are provided for in this Agreement. If the Contractor fails to comply with this section, MDHHS may terminate this Agreement for default.

The Contractor is licensed to provide service under this agreement under the following license number: CB630200978

2.5. Location of Facilities

The Contractor shall provide services described herein at the following location(s):

30685 Barrington, Ste. 140
Madison Heights, MI 48071

Direct foster care services shall be provided in client, relative caregiver, and foster parent homes.

2.6. Program Focus and Name

Placement Agency Foster Care (PAFC) is a program that provides a comprehensive and coordinated set of activities designed to place and supervise children in out of home placement.

Agreement Number: PAFC15-63011

Amendment Number: 3

Foster care supervision includes the provision of services as throughout this Agreement and when necessary the referral for additional services that will enhance the child's and the family's functioning and ameliorate the conditions that caused the child's removal from parental custody.

Foster care supervision includes developing and implementing a treatment plan and service agreement to comply with the Foster Care Manual which facilitates permanency planning according to the following guidelines:

- . Reunification
- . Adoption
- . Guardianship
- . Permanent Placement with a Fit and Willing Relative.
- . Another Planned Permanent Living Arrangement (AAPLA)

2.7. Provider Numbers

MiSACWIS Provider Number: 10400641

Bridges Provider Number: 6358579

2.8. Credentials

The Contractor shall assure that all staff performing functions under this Agreement, including contractor employees, volunteers and/or subcontractors, are appropriately screened, credentialed, and trained in accordance with licensing rule. Additional staff requirements are identified in Section 2.10 d. of this Agreement.

2.9. Compliance Requirements

Except in subsection (h), the Contractor shall comply with the following requirements:

- a. The Contractor shall comply with all applicable MDHHS policy in the Children's Foster Care (FOM), Guardianship (GDM), Confidentiality (SRM 131), Interstate Compact (ICM), and Adoption (ADM) Manuals and MDHHS policy amendments (including interim policy bulletins).
- b. Throughout the term of this Agreement, the Contractor shall ensure that it provides all applicable MDHHS policy and MDHHS policy amendments (including interim policy bulletins) and applicable Administrative Codes to social service staff. The Contractor shall ensure that social service staff complies with all applicable requirements.

Agreement Number: PAFC15-63011

Amendment Number: 3

MDHHS policies, amendments and policy bulletins, are published on the following internet link: <http://www.michigan.gov/dhs>. Administrative Codes are published at on the following internet link: http://michigan.gov/lara/0,4601.7-154-35738_5698-118524--,00.html

- c. The Contractor shall comply with the MDHHS non-discrimination statement:

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs, or disability.

The above statement applies to all licensed and unlicensed caregivers and families and/or relatives that could potentially provide care or are currently providing care for MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

- d. The Contractor shall provide services within the framework of Michigan's Child Welfare Practice Model, MiTEAM. The Contractor shall utilize the skills of engagement, assessment, teaming and mentoring in partnering and building relationships with families and children by exhibiting empathy, professionalism, genuineness and respect. Treatment planning shall be from the perspective of family/child centered practice.
- e. The contractor shall ensure all directives and services ordered by the court are completed to the satisfaction of the court within the timeframes ordered.
- f. The Contractor shall participate in random moment time studies (RMTS). An RMTS is a process where participants are emailed short surveys and asked to indicate what they were doing at an assigned time. The time study is required to determine the amount of time spent on various activities. Based on these results, MDHHS determines the amount that can be charged to various funding sources.
- g. The Contractor shall assure the coordination of all services based on an assessment of the parent's needs. The Contractor shall assure the coordination and provision of all treatment services required based on an assessment of each child's needs. Treatment services include, but are not limited to the provision of counseling/therapy for each child. The Contractor shall ensure the provision of all medical, dental and behavioral health services required based on an assessment of each child's needs. The Contractor may utilize Medicaid (or private insurance) reimbursable services to comply with this requirement. If a counseling or therapy service is not available or accessible for each child, the Contractor is responsible for the direct provision of the service.

Agreement Number: PAFC15-63011

Amendment Number: 3

- h. Under 1973, PA 116, as amended by 2015 PA 53, the Contractor has the sole discretion to decide whether to accept or not accept a referral from MDHHS. Nothing in this Agreement limits or expands the application of this Public Act.

- i. Compliance with MDHHS Implementation, Sustainability, and Exit Plan

The Contractor shall ensure compliance with all applicable provisions and requirements of Dwayne B. v. Snyder, et al., 2:06-cv-13548, Implementation Sustainability and Exit Plan.

- j. Prudent Parent Expectations

The Contractor shall ensure prudent parent expectations are followed as outlined in FOM 722-11, Prudent Parent Standard & Delegation of Parental Consent.

Additional Compliance Provisions

The Contractor shall comply with the provisions of:

- a. 1984 Public Act, 114, as amended being M.C.L. 3.711 *et seq.*, Interstate Compact on the Placement of Children.
- a. 1975 Public Act 238, as amended, being M.C.L. 722.621 *et seq.*, Child Protection Law.
- c. 1982 Public Act 162, as amended, being M.C.L. 450.2101 *et seq.*, Michigan Nonprofit Corporation Act.
- d. 1994 Public Act 204, as amended, being M.C.L. 722.921 *et seq.*, Michigan Children's Ombudsman Act.
- e. 1973 Public Act 116, as amended, being M.C.L. 722.111 *et seq.*, Michigan Child Care Organization Act.
- f. 1939 Public Act 288, Chapter X, being M.C.L. 710.1 *et seq.*, Michigan Adoption Code.
- g. 1984 Public Act 203, as amended, being M.C.L. 722.951 *et seq.*, Michigan Foster Care and Adoption Services Act.
- h. The Social Security Act as amended by the Multiethnic Placement Act of 1994 (MEPA); Public Law 103-382, and as amended by Section 1808 of the Small Business Job Protection, the Interethnic Adoption Provision (IEAP).
- i. The Indian Child Welfare Act (ICWA); Public Law 95-608 being 25 U.S.C. 1901 *et seq.*
- j. 1976 Public Act 453, as amended, being M.C.L. 37.2101 *et seq.*, Elliott-Larsen Civil Rights Act.
- k. Fostering Connections to Success Act of 2008
- l. Preventing Sex Trafficking and Strengthening Families Act, Federal PL 113-183

Compliance with ICWA Requirements

Agreement Number: PAFC15-63011

Amendment Number: 3

The Contractor shall provide case management services in accordance with the "Active Efforts" requirements established in the ICWA; Public Law 95-608 being 25 U.S.C 1901 *et seq.* These requirements include but are not limited to the following:

- a. Establish an American Indian child as a member of a Tribe in accordance with ICWA and as defined in the MDHHS Native American Affairs (NAA) manual.
- b. Provide "Active Efforts" case management services in with in accordance with ICWA and as defined in the NAA manual.
- c. Provide placement of American Indian children in accordance with "Placement Priorities" as established in ICWA and defined in the NAA manual.
- d. Provide "Expert Witness" testimony in accordance with ICWA and as defined in the NAA manual.
- e. Provide services to American Indian families within the context of their culture and ethnicity. Maintaining knowledge in the following:
 - 1) How culture and rituals influence parenting decisions.
 - 2) Determine what services and supports will be most effective.
 - 3) Knowledge and respect of tribal practices.

2.10. Services to be Provided

a. Foster Home Licensing Data Entry

The Contractor shall document all recruitment and licensing activities into the tracking system identified by MDHHS.

b. Caseload Tracking and Reporting

The Contractor shall report to MDHHS caseload ratios for social services supervisors, social service staff and licensing staff in a format and within timeframes as determined by MDHHS.

c. Service Standards for Trial Reunification

Trial Reunification is a court-ordered placement where the child is returned from an out-of-home placement to the care of the parent or guardian from whom he or she was removed. The child remains under court supervision during the Trial Reunification period with the MDHHS retaining placement care and custody

- 1) The Contractor shall provide the following services to children in trial reunification:

Agreement Number: PAFC15-63011

Amendment Number: 3

- a) Assist in preparing the parent, child, and caregiver for the transition to trial reunification. See FOM 722-7B.
- b) A Family Team Meeting prior to placement of a child in the parental home to develop a transition plan with the parent, caregiver and child, if age appropriate. The Contractor shall have Family Team Meetings quarterly until case closure. See FOM 722-06B.
- c) Complete a new Family Assessment of Needs and Strengths, Child Assessment of Needs and Strengths, and Safety Assessment and Safety Plan. See FOM 722-8A, 722-8B and 722-9B.
- d) Continue case worker visit expectations as required in FOM 722-6H.
- e) Maintain support services until case closure. The Contractor shall document services needed to continue to meet the child's needs and identified providers for such services to provide continuity of services. See FOM 722-7B.
- f) Continue assessing and monitoring of the case plan and safety plan.

d. Staff Training

1) Child Welfare Training Institute: Requirements

The Contractor shall ensure that staff transferring to a foster care social service position from another children's services position that has successfully completed the Child Welfare Training Institute (CWTI) Pre-Service Institute (PSI) training in that program, shall attend and complete CWTI-Foster Care Private Agency Program Specific Transfer Training (PSTT) within six months of assuming the foster care position.

2) Child Welfare Training Institute: Registration Process

- a) The Contractor shall register all staff required to attend CWTI training by each individual staff member using the preferred method of CWTI by going directly to the CWTI web site at <http://www.michiganchildwelfaretraining.com/>.
- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To cancel or change training registration, the Contractor will need to directly contact CWTI by telephone or email.
- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by MDHHS at least seven days before the training commences.

3) Foster Home Certification Supervisory Staff: Training Requirements

The Contractor shall ensure that all foster home certification supervisors successfully complete certification training, prior to assuming supervisory

Agreement Number: PAFC15-63011

Amendment Number: 3

responsibility for social service workers who perform foster home licensing functions.

4) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of CWTI training and DCWL Certification Training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

e. Relative Licensing

The Contractor may elect to facilitate the licensure of relative caregivers providing care to children in out-of-home placements that are under the direct care and supervision of MDHHS. Facilitation of licensure includes but is not limited to the following activities:

- 1) Accept referrals of unlicensed relative caregivers from MDHHS, for possible licensure as a foster family home, based on the Contractor's capacity to complete the licensing process as outlined in foster care policy.
- 2) On forms provided by MDHHS, and when requested by MDHHS, the Contractor shall report to MDHHS monthly on the number and characteristics of unlicensed relative homes and the children in those homes, and on progress in licensing the homes.

f. Adoption and Foster Care Analysis Reporting System Requirements

The Contractor shall enter all child and family information into the Michigan Statewide Automated Child Welfare System (MiSACWIS) to enable MDHHS to comply with Federal Adoption and Foster Care Analysis and Reporting System (AFCARS) reporting requirements. Failure to comply with this reporting requirement shall result in a penalty for the Contractor as specified in Section 3.1 f. of this Agreement.

2.11. Expected Program Performance Outcomes

During the period of this Agreement, the Contractor shall work toward the achievement of the performance measures listed below.

MDHHS shall obtain data from its systems on a quarterly basis to be determined by MDHHS, in the format specified by MDHHS. If, based on an evaluation of submitted data, there is a gap between the performance of a Contractor and the

Agreement Number: PAFC15-63011

Amendment Number: 3

performance objective, the Contractor shall within 90 days of receiving the data from MDHHS develop a plan to eliminate the performance gap.

a. Placement Stability

Children supervised by the Contractor shall have no more than two placement settings while supervised by the individual Contractor's program, using the following minimum acceptable standards:

- 1) 0-365 days = 86% or more will have no more than two placement settings.
- 2) 366-730 days = 73% or more will have no more than two placement settings.
- 3) 731 + days = 45% or more will have no more than two placement settings.

b. Timeliness of Reunification

No fewer than 43% of children supervised by the Contractor for 30 days or more shall be discharged from foster care to the home of a parent or legal guardian within 12 months of removal.

c. Permanency of Reunification

No more than 4% of children supervised by the Contractor who were discharged from foster care to the home of a parent or legal guardian within 12 months of removal.

d. Timeliness of Adoptions

No fewer than 36.6% of children supervised by the Contractor for 30 days or more shall be discharged from foster care to a finalized adoption within 24 months of removal.

e. Discharge to Permanency for Children in Foster Care for Long Periods of Time

No fewer than 29.1% of children supervised by the Contractor for the most recent 24 months shall be discharged to a permanent placement prior to their 18th birthday. Permanent placement is defined as Adoption, Guardianship or Reunification.

f. Legally-Free Children in Foster Care for Long Period of Time Who Are Discharged to Permanency

Agreement Number: PAFC15-63011

Amendment Number: 3

No fewer than 98% of children supervised by the Contractor for the most recent 12 months and legally free for adoption shall be discharged to a permanent placement prior to their 18th birthday. Permanent placement is defined as Adoption, Guardianship or Reunification. (A discharge to Reunification for children "legally free" occurs when they are placed with a relative for 6 months or longer. This is for AFCARS reporting purposes by MDHHS.).

g. Sibling Placement

No fewer than 90% of children supervised by the Contractor shall be placed with all members of their sibling group (out of home minor siblings only) unless it has been determined that the placement with the siblings is contrary to the best interests of the children. Contrary to the best interests of the children is defined as:

- 1) Placement together is harmful to one or more of the siblings; or
- 2) One of the siblings has exceptional needs that can only be met in a specialized program or facility; or
- 3) The size of the sibling group makes such placement impractical, notwithstanding diligent efforts to place the group together.

2.12. Audit Requirements

Contractor/Vendor Relationship

This Agreement constitutes a contractor/vendor relationship with MDHHS. The Contractor must immediately report to the MDHHS Bureau of Audit any audit findings of a Going Concern or accounting irregularities, including noncompliance with provisions of this Agreement.

2.13. Financial Audit Requirements

a. Required Audit or Notification Letter

Contractors must submit to the Department either a Single Audit, Financial Statement Audit, or Audit Status Notification Letter as described below. If submitting a Single Audit or Financial Statement Audit, Contractors must also submit a Corrective Action Plan for any audit findings that impact MDHHS-funded programs, and management letter (if issued) with a response.

1) Single Audit

Contractors that are a non-profit organization and that expend \$750,000 or more in federal awards during the Contractor's fiscal year, must submit a Single Audit to the Department, regardless of the amount of funding received from the Department. The Single Audit must comply with the requirements of Title 2 Code of Federal Regulations, Subpart F.

2) Financial Statement Audit

Agreement Number: PAFC15-63011

Amendment Number: 3

Contractors exempt from the Single Audit requirements with fiscal years that receive \$500,000 or more in **total funding** from the Department in State and Federal grant funding must submit to the Department a Financial Statement Audit prepared in accordance with generally accepted auditing standards (GAAS).

3) Audit Status Notification Letter

Contractors exempt from the Single Audit and Financial Statement Audit requirements (1 and 2 above) must submit an Audit Status Notification Letter that certifies these exemptions. The template Audit Status Notification Letter and further instructions are available at <http://www.michigan.gov/mdhhs> by selecting Inside MDHHS menu, then MDHHS Audit, then Audit Reporting.

b. Due Date and Where to Send

The required audit and any other required submissions (i.e. Corrective Action Plan and management letter with a response), or Audit Status Notification Letter must be submitted to the Department within nine months after the end of the Contractor's fiscal year by e-mail to the Department at MDHHS-AuditReports@michigan.gov. The required submissions must be in PDF files and compatible with Adobe Acrobat (read only). The subject line must state the agency name and fiscal year end. The Department reserves the right to request a hard copy of the audit materials if for any reason the electronic submission process is not successful.

c. Penalty

Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

d. Other Audits

The Department or federal agencies may also conduct or arrange for "agreed upon procedures" or additional audits to meet their needs.

2.14. Cost Reporting

The Contractor shall submit annual financial cost reports based on the state's fiscal year which begins October 1 and ends September 30 in the following calendar year. The reports shall contain the actual costs incurred by providers in delivering services required in this agreement to MDHHS clients for the reporting period. Costs for non-MDHHS children are not to be included. Reports will be submitted using a template provided by MDHHS. The financial reports shall be submitted annually, and will be due November 30 of each fiscal year. The Contractor must comply with all other program and fiscal reporting procedures as are or may hereinafter be established by MDHHS. Reports shall be submitted electronically to MDHHS-Foster-Care-Audits@michigan.gov with the subject line: PAFC Actual Cost Report. Failure to meet reporting responsibilities as identified in this agreement may result in delay or withholding of future payments.

Agreement Number: PAFC15-63011

Amendment Number: 3

2.15. Service Documentation

The Contractor agrees to maintain program records required by MDHHS, program statistical records required by MDHHS, and to produce program narrative and statistical data at times prescribed by, and on forms furnished by, MDHHS.

2.16. Private Agency MiSACWIS

The Contractor shall ensure that private agency payment staff has access to the Michigan Statewide Automated Child Welfare Information System (MiSACWIS) through a web-based interface, henceforth referred to as the "MiSACWIS application." Requirements for MiSACWIS for CPA contracts may be found at http://www.michigan.gov/mdhhs/0,5885,7-339-71551_7199--,00.html

For all agency assigned cases in MiSACWIS, the Contractor shall enter all case management activities, including payments and all required documentation per policy in MiSACWIS.

2.17. Billing

The Contractor shall submit through the MiSACWIS system the bi-weekly roster for any child in the Contractors care per the instructions within the MiSACWIS system. The billing shall indicate the units of service provided by the Contractor and shall be submitted to MDHHS within 30 days from the end of the billing period.

No original request for payment submitted by the Contractor more than three years after the close of the two week billing period during which services were provided shall be honored for payment.

When the Contractor's financial records reveal that payment for a child has not been provided by MDHHS within 90 days of the date of service, the Contractor will seek payment resolution by contacting the direct supervisor of the assigned MDHHS worker in writing. Any concerns over a payment authorization or issuance that cannot be resolved within 60 days of the written notice must be reported to the MDHHS County Director for immediate resolution. The Contractor will apprise MDHHS of any ongoing, unresolved payment concerns.

2.18. Fees and Other Sources of Funding

The Contractor guarantees that any claims made to MDHHS under this Agreement shall not be financed by any source other than MDHHS under the terms of this Agreement. If funding is received through any other source, the Contractor agrees to deduct from the amount billed to MDHHS the greater of either the fee amounts, or the actual costs of the services provided.

Agreement Number: PAFC15-63011

Amendment Number: 3

The Contractor may not accept reimbursement from a client unless the Agreement specifically authorizes such reimbursement in the "Contractor Responsibility" Section. In such case, a detailed fee scale and criteria for charging the fee must be included. If the Contractor accepts reimbursement from a client in accordance with the terms of the Agreement, the Contractor shall deduct these fees from billings to MDHHS.

Other third party funding sources, e.g., insurance companies, may be billed for contracted client services. Third party reimbursement shall be considered payment in full unless the third party fund source requires a co-pay, in which case MDHHS may be billed for the amount of the co-pay. No supplemental billing is allowed.

2.19. Recoupment of Funding and Repayment of Debts

a. Recoupment of Funding

If the Contractor fails to comply with requirements as set forth in this Agreement, or fails to submit a revised payment request within allotted time frames established by MDHHS in consultation with the Contractor, MDHHS may, at its discretion, recoup or require the Contractor to reimburse payments made under this Agreement which MDHHS has determined that the Contractor has been overpaid. The Contractor is liable for any cost incurred by MDHHS in the recoupment of any funding.

Upon notification by MDHHS that repayment is required, the Contractor shall make payment directly to MDHHS within 30 days or MDHHS may withhold current or future payments made under this or any other agreements, current or future, between MDHHS and the Contractor.

If the Contractor fails to: (1) correct noncompliance activities identified by MDHHS, (2) submit revised billings as requested as part of a Corrective Action Plan when required; or (3) remit overpayments or make arrangements to have the overpayments deducted from future payments within 30 days, such failure shall constitute grounds to terminate immediately any or all of MDHHS' agreements with the Contractor. MDHHS shall also report noncompliance of the Contractor to Michigan's Department of Technology, Management and Budget. Such report may result in the Contractor's debarment from further contracts with the state of Michigan.

b. Repayment of Debts and Other Amounts due MDHHS

By entering into this Agreement, the Contractor agrees to honor all prior repayment agreements established by MDHHS with the Contractor or Contractor's predecessors. If the Contractor has an outstanding debt due to MDHHS but does not have a repayment agreement, the Contractor agrees to

Agreement Number: PAFC15-63011

Amendment Number: 3

make monthly payments to MDHHS at an amount not less than 5% of any outstanding balance and to begin on the date this Agreement is executed.

If the Contractor fails to honor prior repayment agreements, or the Contractor fails to begin repayment on an obligation due MDHHS that is not subject to a repayment agreement, MDHHS will initiate the administrative process to reduce payments to the Contractor under this Agreement to recoup the debt. The payment reduction will be made at the amount originally established in the repayment agreement or at an amount not less than 5% of any outstanding balance effective on the date this Agreement is executed.

2.20 Child Protection Law Reporting Requirements

- a. The Contractor shall ensure that all employees who have reasonable cause to suspect child abuse or neglect shall report any suspected abuse or neglect of a child in care to MDHHS for investigation as required by Public Acts of 1975, Act Number 238.
- b. Failure of the Contractor or its employees to report suspected abuse or neglect of a child to MDHHS shall result in an immediate investigation to determine the appropriate corrective action up to and including termination of the contract.
- c. Failure of the Contractor or its employees to report suspected child abuse or neglect two or more times within a one-year period shall result in a review of the contract agency's violations by a designated Administrative Review Team, which shall include the Director of CSA and the Director of DCWL or its successor agency, that shall consider mitigating and aggravating circumstances to determine the appropriate corrective action up to and included license revocation and contract termination.

2.21 The Division of Child Welfare Licensing (DCWL)

DCWL shall be responsible for review of the Contractor's compliance with the Agreement and any court orders, via an Annual Compliance Review (ACR) and Special Investigations. DCWL may review, analyze and comment on all activities covered within the terms of the Agreement or court order. If the ACR or Special Investigation reveals that the Contractor has not complied with the requirements of this Agreement or court order, the following procedures shall be implemented:

- a. DCWL shall notify the Contractor of the Agreement or court noncompliance. This notification shall occur verbally during an exit conference, and be followed with a written report of the findings. The Contractor may request a meeting to discuss and examine the identified Agreement or court noncompliance.

Agreement Number: PAFC15-63011

Amendment Number: 3

- b. Following the identification of the Agreement or court noncompliance, DCWL will request the Contractor submit a Corrective Action Plans (CAP) to DCWL within 15 days of receiving the written report of findings.
- c. After the Contractor's CAP has been reviewed and approved by DCWL, the Contractor's compliance with the CAP shall be reviewed in accordance with time frames established by DCWL in the written notification of acceptance of the CAP.
- d. Based on the severity or repeated nature of cited violations, a recommendation may be made by DCWL at any time to place a moratorium on new placements with the contractor or to cancel the contract. If either recommendation is made, a meeting will be convened with the director of the contracted agency, the division director of DCWL and the CSA director or designee to provide the contractor with the opportunity to provide documented information on why the moratorium or cancellation of the contract should not occur.
- e. If a moratorium on new placements is put into place, it shall be for a minimum of 90 days to allow the contractor to remedy cited violations and comply with any agreed on CAP. If the cited violations are not corrected during the period of the moratorium or additional serious violations are cited, consideration shall be given to cancellation of the agency's contract. Final decisions regarding the cancellation of a contract shall be made by the CSA director.

2.22 Corrective Action Requirements

If a program review by MDHHS reveals a lack of compliance with the requirements of this Agreement, the Contractor shall:

- a. Meet with MDHHS to discuss the noncompliance.
- b. Prepare a corrective action plan within 30 days of receiving MDHHS' written findings.
- c. Achieve compliance within 60 days of receipt of MDHHS' approval of the corrective action plan (unless other time frames are agreed to in writing by MDHHS) or MDHHS may terminate this Agreement, subject to the standard contract terms.

3. MDHHS RESPONSIBILITIES

3.1. Payments

MDHHS shall open and process payment within 30 days of placement, with payment authorization effective the date of the child's placement with the Contractor.

Agreement Number: PAFC15-63011

Amendment Number: 3

- a. The entire rate paid to the Contractor for board and care, clothing and allowance shall be paid by the Contractor to the foster families providing the family foster care.
- b. The Contractor's administrative rate(s) for services provided under this Agreement shall be:

Bridges Provider Number 6358579
 MISACWIS Provider Number 10400641

<u>Service Code</u>	<u>Per Diem Rate</u>	<u>Effective Date</u>
780	\$40.00	06/01/15
782	\$28.00	10/01/13
TR	\$37.00	10/01/13
0838	*\$2.50	10/01/13

*The above rate is only to be used for American Indian Children

If the Contractor has an adoption agreement with MDHHS and fails to register a child on the Michigan Adoption Resource Exchange (MARE) as required in that agreement, the Contractor's Foster Care administrative rate for that child shall be reduced by 20% until the child is registered.

The contractor will receive reimbursement subject to appropriations for relative licensure as outlined in that years State fiscal appropriation.

If a Contractor does not submit the financial cost reports as described in Section 2., CONTRACTOR RESPONSIBILITIES, the per diem administrative rate shall be reduced by \$3.00 until contractor becomes compliant with the reporting requirements.

- c. The Contractor shall be paid for family foster care services specified in this Agreement at a board and care rate established by MDHHS. A determination of care rate may be established by MDHHS in accordance with the FOM when extraordinary care or expense is required of the foster parent. Special rates must have the approval of the Director of MDHHS' local office responsible for the supervision of the child for whom foster care is provided.
- d. Payment for additional service costs not included in the per diem rate may be authorized in accordance with the FOM.

When the Contractor's financial records reveal that a payment for a child has not been provided by MDHHS within 90 days of their acceptance of the child for case management services, the Contractor will contact the MDHHS County Director in writing seeking payment resolution. The Contractor shall

Agreement Number: PAFC15-63011

Amendment Number: 3

advise MDHHS of any concerns over a payment amount that cannot be reconciled at the staff level within 90 days.

- e. Upon placement, MDHHS shall ensure that the child(ren) has adequate clothing as defined by the Clothing Inventory Checklist (DHS-3377) or shall reimburse the Contractor up to the approved limit allowed for clothing.
- f. Inability of MDHHS to comply with the federal reporting requirements of AFCARS due to failure of the Contractor to fulfill AFCARS related reporting requirements shall result in a three percent reduction in the Contractor's administrative rate for the six month period subsequent to the due date of the AFCARS report to the Federal government.
- g. Foster Care Training Payments

Payments will be made for eligible training which commenced after January 1, 2012.

A payment will be made to the Contractor for each staff that completes training and passes competency tests as required in the Implementation, Sustainability and Exit Plan according to the following schedule:

1) Completion of the Child Welfare Caseworker Training

Payment will be \$6,000.00 total, calculated on a per diem basis, for completion of CWTI-PSI that includes a minimum of 9 weeks of competency-based classroom and field training if the caseworker passes the competency evaluation within 16 weeks of hire.

2) Completion of the Child Welfare Certificate (CWC) Training

Payment will be \$3,000.00 total, calculated on a per diem basis, for completion of the CWTI-CWC that includes a minimum of five weeks of competency-based classroom and field training if the caseworker certified certificate holder passes the competency evaluation.

3) Completion of the Child Welfare Supervisor Training

Payment will be \$1,500.00 total, calculated on a per diem basis, for completion of the Supervisor Training that includes a minimum of one week within 90 days of hire/promotion, if the supervisor passes the competency evaluation.

4) Completion of the Child Welfare Transfer Training

Agreement Number: PAFC15-63011

Amendment Number: 3

The two week foster care PSTT shall be completed within six months of hire.

Payment will be \$2,800.00 for the completion of the foster care PSTT training. The training is the same as the Foster Care Core Training for Foster Care caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated.

- h. For all Contractor staff hired on or after May 1, 1998 attending required CWTI-PSI, PSTT, and supervisor training, MDHHS-CWTI shall reimburse the Contractor at the Contractor's normal rate of reimbursement or State rates, whichever is less for staff trainee expenditures incurred as part of CWTI attendance. MDHHS-CWTI does not cover travel reimbursement for in-service training. Travel reimbursement shall be limited to lodging, mileage and parking with the following conditions:
 - 1) For each trainee who attends the training session, MDHHS shall reimburse the Contractor up to five nights lodging per week if lodging expense is incurred. If training continues for two consecutive weeks or longer and the cost of lodging is less than the mileage cost to travel to and from the Contractor's facility over the intervening weekend, the Contractor may request the director of Office of Workforce Development and Training in advance for a travel exception for weekend lodging.
 - 2) For each mile of travel to a CWTI training session closest to the Contractor's site, MDHHS shall reimburse the Contractor for mileage to and from the training and the trainee's assigned work location or home, whichever is closer. The applicable State rate for mileage shall be the lesser of the Contractor's prevailing rate or the State's standard rate.
 - 3) Parking shall be reimbursed at actual cost, documented with a receipt.
 - 4) MDHHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from DCWL. Refer to the CWTI web site for current reimbursement information for CWTI training at <http://www.michiganchildwelfaretraining.com/Training/Travel.aspx>

Classroom Training Payment

- 1) The Contractor must submit a signed and dated agency letterhead memo attached to the DHS-1582 Payment Voucher that includes the following information:

Agreement Number: PAFC15-63011

Amendment Number: 3

- a) Worker name
 - b) Training, type, i.e. PSST, PSI etc.
 - c) Training dates (time span in training)
 - d) Amount of reimbursement requested.
 - e) A copy of the transcript reflecting the completion of the training for each foster care worker and supervisor covered by the payment voucher. This is required before accounting will issue payment.
 - f) Memo signed by senior management; not the individual who attended training.
- 2) The information must be submitted electronically to: MDHHS-FederalComplianceDivision@michigan.gov. The subject line shall read: Training Payment.

Training Travel Reimbursement

- 1) The Contractor must submit:
 - a) Certification letter on agency letterhead signed and dated by senior management to include:
 - Agency Federal ID Number
 - Exact trainee name as registered in OmniTrack Plus (formerly JJOLT)
 - Exact class name
 - Beginning and ending travel dates
 - Amount of reimbursement requested
 - b) DHS-1582 Payment Voucher.
 - c) DHS-1582 TV-NSE for each trainee.
 - d) MapQuest (or equivalent) printouts for each travel route.
 - e) All original receipts.
 - f) Transcripts showing the training completed.
- 2) Please submit the above information to:

Ingham County MDHHS/OWDT
Attention: Travel Reimbursement
PO Box 30088
5303 S. Cedar Street
Lansing, MI 48911
- i. The Contractor shall be paid for Trial Reunifications services specified in the agreement not to exceed 180 days from the child's placement in the parental home.
 - 1) The Contractor must submit the following on a monthly basis:
 - a) A completed DHS-1582 CS Payment Voucher

Agreement Number: PAFC15-63011

Amendment Number: 3

b) A case listing that contains the following child identifying information:

- Placing Agency Provider ID
- Agency Name
- MiSACWIS log ID if known
- Child last name
- Child first name
- Recipient ID
- Foster Care case number
- Billing start date
- Billing end date
- Number of days to pay
- American Indian Y/N
- Date of court order commencing the Trial Reunification
- Date the foster care case was dismissed by the court and/or
- Date the child reentered a foster care placement

2) The information must be submitted electronically to: MDHHS-trialreunificationpayments@michigan.gov.

j. The costs of all services provided under this Agreement are included in the above rate(s) unless otherwise noted in this Agreement.

3.2. Performance Evaluation and Monitoring

The services provided by the Contractor under this Agreement shall be evaluated and assessed at least annually by MDHHS on the basis of the criteria outlined in Section 2.11.

MDHHS shall perform contract monitoring through activities such as:

- a. Auditing expenditure reports.
- b. Conducting on-site monitoring.
- c. Reviewing and analyzing reports.

Article VI

In Section III GENERAL PROVISIONS – PRIVATE, NON-PROFIT AND PRIVATE PROPRIETARY, shall be renamed Section 4 and C., Subcontracts and W., Indemnification, shall be deleted and replaced with:

C. Subcontracts

Contractor may not delegate any of its obligations or subcontract under this Agreement without the prior written approval of MDHHS. Contractor must

Agreement Number: PAFC15-63011

Amendment Number: 3

notify MDHHS prior to the proposed delegation, and provide MDHHS 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 Agreement Activities;
- b. Make all payments to the subcontractor; and
- c. Incorporate the terms and conditions contained in this Agreement in any subcontract with a subcontractor.

Contractor remains responsible for the completion of the Agreement Activities, compliance with the terms of this Agreement, and the acts and omissions of the subcontractor. MDHHS, in its sole discretion, may require the replacement of any subcontractor.

W. General Indemnification

Contractor must defend, indemnify and hold the State, its departments, divisions, agencies, offices, commissions, officers, and employees harmless, without limitation, from and against any and all actions, claims, losses, liabilities, damages, costs, attorney fees, and expenses (including those required to establish the right to indemnification), arising out of or relating to:

- a. Any breach by Contractor (or any of Contractor's employees, agents, subcontractors, or by anyone else for whose acts any of them may be liable) of any of the promises, agreements, representations, warranties, or insurance requirements contained in this Agreement;
- 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).

MDHHS 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 MDHHS, demonstrate its financial ability to carry out these obligations.

MDHHS is entitled to: (i) regular updates on proceeding status; (ii) participate in the defense of the proceeding; (iii) employ its own counsel; and to (iv) retain control of the defense if MDHHS deems necessary. Contractor will not, without

Agreement Number: PAFC15-63011

Amendment Number: 3

MDHHS's written consent (not to be unreasonably withheld), settle, compromise, or consent to the entry of any judgment in or otherwise seek to terminate any claim, action, or proceeding. To the extent that any State employee, official, or law may be involved or challenged, MDHHS may, at its own expense, control the defense of that portion of the claim.

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

EXHIBIT 11

AGREEMENT NUMBER: A17-63011

AMENDMENT NUMBER: 1

Between

THE STATE OF MICHIGAN

DEPARTMENT OF HEALTH AND HUMAN SERVICES

And



CONTRACTOR	Bethany Christian Services
CONTRACTOR ADDRESS	901 Eastern Ave., NE, PO Box 294, Grand Rapids, MI 49501
CONTRACTOR EMAIL	bdv@bethany.org

CONTRACT ADMINISTRATOR	EMAIL
Cathe Hoover	Hooverc3@michigan.gov

AGREEMENT SUMMARY			
SERVICE DESCRIPTION	Adoption		
GEOGRAPHIC AREA	Statewide		
INITIAL EFFECTIVE DATE	October 1, 2016	CURRENT EXPIRATION DATE	September 30, 2019
CURRENT AGREEMENT VALUE	\$1,000,000.00		
AGREEMENT TYPE	Unit Rate		

AMENDMENT DESCRIPTION			
EXTEND EXPIRATION DATE	☐ YES	☒ NO	NEW EXPIRATION DATE
AMENDMENT AMOUNT	ESTIMATED REVISED AGGREGATE AGREEMENT VALUE		
\$	☐ INCREASE	☐ DECREASE	\$1,000,000.00
NATURE OF CHANGE	This amendment changes language in the agreement.		

The undersigned have the lawful authority to bind the Contractor and the Michigan Department of Health and Human Services (MDHHS) to the terms set forth in this Agreement.

FOR THE CONTRACTOR:

Bethany Christian Services

Contractor

Signature of Director or Authorized Designee

Brian J. De Vos, Sr. VP Child & Family Services

Print Name

8/15/17

Date

FOR THE STATE:

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES

Signature of Director or Authorized Designee

Christine H. Sanches

Print Name

8.22.17

Date

Agreement Number: A17-63011
 Amendment Number: 1

<u>Agreement Period</u>	<u>Amount</u>
October 1, 2016 through September 30, 2019	\$1,000,000.00
Total Amount:	\$1,000,000.00

Check all agreement years affected by this amendment:

☒ Year 1	☒ Year 2	☒ Year 3
☐ Year 4	☐ Year 5	☐ Year 6

**STATE OF MICHIGAN
 DEPARTMENT OF HEALTH AND HUMAN SERVICES**

WHEREAS, the Michigan Department of Health and Human Services (hereinafter referred to as "MDHHS") entered into a contractual Agreement effective October 1, 2016, with Bethany Christian Services (hereinafter referred to as "Contractor"), having a mailing address of 901 Eastern Ave., NE, PO Box 294, Grand Rapids, MI 49501, for the provision of certain services as set forth therein; and,

WHEREAS, it is mutually desirable to MDHHS and to the Contractor to amend the aforesaid Agreement.

THEREFORE, in consideration of the promises and mutual covenants hereinabove and hereinafter contained, the parties hereto agree to the following amendment of said Agreement. This amendment shall be attached to the Agreement, said Agreement being hereby reaffirmed and made a part hereof.

Article I

This amendment shall be effective on the date of MDHHS signature.

Article II

In Section 2., CONTRACTOR RESPONSIBILITIES, Item 2.9., Compliance Requirements, c., Item 2.10., Services to be Provided, c., MARE Related Responsibilities, e., Staff Training, Item 2.11., Expected Performance Outcomes, Item 2.17., Billing shall be deleted and replaced with:

2.9 Compliance Requirements

- c. The Contractor shall comply with the MDHHS non-discrimination statement:

Agreement Number: A17-63011

Amendment Number: 1

Michigan Department of Health and Human Services (MDHHS) will not discriminate against any individual or group because of race, sex, religion, age, national origin, color, height, weight, marital status, gender identity or expression, sexual orientation, political beliefs or disability.

The above statement applies to all MDHHS supervised children, and to all applications filed for adoption of MDHHS supervised children, including MDHHS supervised children assigned to a contracted agency.

2.10 Services to be Provided

c. MARE Related Responsibilities

The Contractor shall cooperate with MARE related activities and responsibilities, as detailed in this document including but not limited to:

- 1) The Contractor shall register children with MARE per policy timeframes and requirements.
- 2) The Contractor shall appropriately inform and prepare children concerning the process of photo listing. Children shall be adequately attired and well groomed. Adequately attired is defined as that which a parent would provide for their child in a school photo. The Contractor is responsible for securing photography services and may request coupons or assistance from the MARE office. The Contractor is responsible for facilitating transportation to key photo sites and supervision of the child (ren) during the process.
- 3) The Contractor shall, as appropriate to the child's ability, involve youth over age nine (9) in developing individual recruitment materials and narratives for MARE photo listing.
- 4) The Contractor must submit a copy of the Order Placing Child after Consent and the Order of Adoption to the MARE office within ten (10) working days of issuance by the court.
- 5) Upon determination by the Contractor that the MARE potential family 'match' is appropriate, the child and family agencies shall begin the process towards adoption within ten (10) working days.
- 6) The Contractor shall provide a written brochure (developed by MARE) to adoptive families regarding their right to be included in the MARE prospective family registry and provide an explanation of this process during orientation. This brochure and information shall again be provided to the prospective family during the formal training process.

Agreement Number: A17-63011

Amendment Number: 1

- 7) The Contractor shall ensure all age appropriate youth available for adoption have knowledge of and access to the MARE newsletter for youth.
- 8) The Contractor shall notify MARE no less than quarterly of planned adoption related events, scheduled or tentatively scheduled for the next quarter. These activities shall include but are not limited to orientation, training dates, workshops, adoption fairs, recruitment activities, post adoption support activities and guest speakers. The Contractor will indicate if the events are open to the public or limited to a specific audience and any costs for family participation.
- 9) If the local court is participating, the Contractor shall cooperate with MARE during planning and implementation of National Adoption Day activities and regionally based adoption events.
- 10) The Contractor shall ensure MARE staff has access to case records, the child, child's worker, and other material or persons necessary for the development and updating of the child's MARE file and recruitment material.
- 11) The Contractor shall submit the completed Disruption/Dissolution survey to MARE within thirty (30) days of receipt of the survey from MARE.
- 12) The Contractor shall provide to MARE by October 30th of each year the following:
 - a. The address of all offices.
 - b. Names, telephone numbers and email addresses of all adoption workers and supervisors.
 - c. Types of services provided by the Contractor.
- 13) The Contractor shall ensure that a supervisor attends the regionally based MARE sessions on changes to MARE processes and services. This individual shall then be responsible to disseminate MARE information and material to appropriate agency staff.

e. Staff Training

1) Pre-Service Institute: Requirements

The Contractor shall ensure that staff transferring to an adoption social service position from another children's services position that has successfully completed the Office of Workforce Development and Training

Agreement Number: A17-63011

Amendment Number: 1

(OWDT) Pre-Service Institute (PSI) training in that program, shall attend and complete Adoption Program Specific Transfer Training (PSTT) within six months of assuming the adoption position.

2) OWDT Registration Process

- a) The Contractor shall register all staff required to attend training by each individual staff member through the Learning Management System.
- b) The Contractor supervisor and/or the Contractor training facility coordinator can register Contractor staff online for any training. To cancel or change training registration, the Contractor will need to directly contact OWDT by telephone or email.
- c) Confirmations, with specific details on times and locations, will be emailed to the Contractor/trainee by MDHHS at least seven days before the training commences.

3) Training Documentation

The Contractor shall maintain training documentation which verifies registration and successful completion of training. Additionally, the Contractor shall maintain documentation of the completion of required in-service training for both social service staff and social service supervisory staff.

4) Completion of Security Awareness Training (SAT)

The Contractor shall require each employee, subcontractor, subcontractor employee or volunteer who works directly with clients or who is authorized to have access to client fingerprint-based criminal history record information (CHRI) under this Agreement to successfully complete security awareness training (SAT) within six months of appointment to a position with (CHRI) access and every two years thereafter. Documentation of successful SAT completion is to be located in the personnel record.

Security awareness training is located through the Learning Management System or on the following link: http://www.michigan.gov/mdhhs/0,5885,7-339-71551_11120_74572---.00.html

5) Minimum in-service training

The Contractor shall ensure that each social services staff receives a minimum of 32 hours of qualifying in-service training on an annual basis. The Contractor shall ensure that each social service supervisor receives a minimum of 16 hours of qualifying in-service training on an annual basis. All qualified training shall be training that improves child welfare practice.

Agreement Number: A17-63011

Amendment Number: 1

2.11 Expected Performance Outcomes

During the Agreement, the Contractor shall demonstrate measurable progress toward the achievement of the outcomes listed below:

- a. Fewer than 5% of placements for adoption will end in disruption.
- b. Fewer than 5% of finalized adoptions will end in dissolution.
- c. By September 30th of the fiscal year, not less than 80% of the number of children with a goal of adoption who were legally free for adoption on September 30th of the previous fiscal year, shall have adoptions finalized.
- d. By September 30th of the fiscal year, not less than 80% of the number of children with a goal of adoption who were legally free for adoption on September 30th of the previous fiscal year will have the adoption petition filed with the court.

2.17. Billing

The Contractor shall maintain a record system that documents the total number of units of service as defined in this Agreement and delivered during the term of this Agreement. These records shall also document the specific units billed to MDHHS under this Agreement.

The Contractor shall submit a DHS-1582A to:

Michigan Department of Health and Human Services
Office of Child Welfare Policy and Programs
Suite 514 PO Box 30037
Lansing, MI 48909

The DHS-1582A shall indicate the title of the service provided and the pre adoptive and adoptive name, case ID and date of birth of the child served. The DHS-1582A and any subsequent corrections must be completed and received in the Office of Child Welfare Policy and Programs within 120 days of the date of the placement or finalization, whichever is applicable, as those terms are defined in Section I(M)(2-3) of this Agreement.

- a. Billing for all designated services including: per diem, placement, finalization, permanency, and disruptions, require a copy of the Order Terminating Parental Rights (Permanent Court Ward/Commitment), the signed DHS3600 for cases referred on or after May 2016, or earlier if

Agreement Number: A17-63011

Amendment Number: 1

applicable, and with the exception of per diems, the signed and dated documentation by the court (DHS 5308 or petition date stamped from the court) verifying the date that the court has accepted the adoption petition and support documentation .

- b. The MARE rates require a copy of the MARE photo listing and the subsequent MARE "Hold" document.
- c. The Residential rate requires a copy of the discharge summary from the residential facility and a copy of the placement record including placement with the prospective adoptive parent prior to filling the petition.
- d. Billing for finalizations requires a copy of the Order of Adoption.
- e. Billing for placement requires a copy of the referral/acceptance form (signed DHS 3600 for cases referred on or after May 2016, or earlier if applicable), Order Terminating Parental Rights and the Order Placing Child.
- f. Disruptions require an Ex Parte Order, or order dismissing, a copy of the initial placement order, initial commitment order, documentation verifying the medical condition of the family member if appropriate, a copy of the placement check and agency disruption report.
- g. Legal Risk--Order Placing Child Filed: In cases where a birth parent, individually or through an attorney, has filed a petition to appeal the termination of parental rights, the Contractor shall include a copy of the Claim filed in conformity with MCR7.203 when requesting payment at placement and a copy of the appeal decision order when requesting payment at finalization.
- h. When billing for the per diem, each payment voucher shall be child specific. Attached to the initial payment voucher the following documents must be included: the DHS-3600 (for Adoption Services) with the date of acceptance indicated, the signed agreement of intent to adopt by a relative or identified family (for matched cases only) and verification from MARE that a complete photo listing or a complete "hold" registration was submitted on the case. The Contractor shall identify in Box 13 of the payment voucher the number of days covered, date range, and the number of per diem billings submitted on behalf of the child.
- i. When requesting an exception to the payment rate, it is the responsibility of the Contractor to demonstrate that requests for adoption assistance eligibility determination or MCI consent delayed the adoption placement.

Agreement Number: A17-63011

Amendment Number: 1

If the delay was caused by submission of incomplete paperwork or a lack of response to requests for information, the consideration for exception will be denied. There is a thirty (30) day standard of promptness for adoption assistance eligibility determinations and MCI regular and expedited consent requests and a ninety (90) day standard of promptness for MCI consent requests on competing parties. If information is missing, incomplete, or unclear and needing follow-up, the standard of promptness timeframe will not begin until all needed information is available for review, including legal documents and information needed to fulfill policy requirements. The Adoption Payment Exception Request, DHS 832 form must be submitted with the completed DHS-1582A.

- j. The ICPC rate(s) require copies of the ICPC referral, DHS-3600 (for Adoption Services), adoptive family home study, adoption supervision reports (if applicable), Order Terminating Parental Rights (Permanent Court Ward/Commitment), Adoption Petition documentation and Order of Adoption, if applicable.
- k. Billings for competing parties, in which the case would be eligible for a rate less than the Baseline rate and the Contractor is requesting the Baseline rate, requires the Contractor to submit a Competing Party Rate Exception Request (DHHS-5445) and copies of the case acceptance documentation, dates of the initial inquiry, adoption application and DHS-4809 from each competing party and copies of the assessment for each competing party.

Article III

In Section 3., MDHHS RESPONSIBILITIES, Item 3.1., Payment and Item 3.2., Performance Evaluation and Monitoring shall be deleted and replaced with:

3. MDHHS RESPONSIBILITIES

3.1. Payment

MDHHS shall make payments to the Contractor pursuant to MCL 17.51-17.57 and State of Michigan Financial Management Guide, Part II-Accounting and Financial Reporting, Chapter 25, Section 100, "Prompt Payment for Goods and Services."

- a. MDHHS shall make the following payments to the Contractor:

Rate Category	Placement	Finalization	Permanency
Early Adoption Level 2	\$6,900	\$3,450	\$1,150

Agreement Number: A17-63011

Amendment Number: 1

Early Adoption Level 1	\$6,000	\$3,000	\$1,000
Baseline	\$5,400	\$2,700	\$900
Late Adoption Level 1	\$4,800	\$2,400	\$800
Late Adoption Level 2	\$3,000	\$1,500	\$500
Late Adoption Level 3	\$2,400	\$1,200	\$400
Late Adoption Level 4	\$1,800	\$900	\$300
MARE	\$12,240	\$6,120	\$2,040
Residential	\$7,980	\$3,990	\$1,330
In-State Transfer Services	\$3,000		
Inter-State Existing Services	\$3,000		
Inter-State New Services	\$3,500		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoptive Home Study Denial	\$2000		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoptive Home Study Approval	\$2000		
Inter-State Transfer from another ICPC participating state through ICPC (non-Michigan ward) – Adoption Supervision with applicable reports	\$500 at Placement \$500 at Finalization		

b. Per Diem Payments

For each child where the adoption case is referred to the Contractor by MDHHS, the Contractor shall receive payment of \$20.00 per diem for each day of adoptive services from acceptance of the case (DHS 3600 for cases referred on or after October 2016, or earlier if applicable) to the date of the signed documentation from the court (DHS 5308 or petition date stamped by the court) verifying that the court has accepted the petition and support documentation, or for one hundred fifty (150) days, whichever comes first. The maximum per diem payment amount per child is \$3,000.

For adoption cases referred on or after October 2016, the Contractor may bill for the full per diem amount of \$3,000. In the event that the Contractor receives the full per diem amount on a case which is not assigned to the Contractor for 150 days, the Contractor will be responsible for repayment of

Agreement Number: A17-63011

Amendment Number: 1

the per diem at a rate of \$20.00 for each day in which they received a per diem payment and were no longer assigned to the case.

All per diem payment requests must include verification from MARE that either a complete photo listing or a complete hold registration was submitted to MARE on the case.

Payment of the initial placement rate: the total of all per diem payments for each child shall be deducted from the applicable placement rate to be paid.

c. Adoption Training Payments

The Contractor must submit the following with the completed DHS-1582A to the Office of Child Welfare Policy and Programs in central office:

- 1) A copy of the transcript reflecting the completion of the CWTI pre-service training for each adoption worker.
- 2) A statement confirming that 50% of the adoption worker's caseload will be children in the MDHHS foster care system.

d. Placement Disruption

Payment after Placement for adoptions ending in disruption will only be made in the following cases:

- 1) Disruption Due to Medical Condition of Prospective Family Member: If the adoptive family experiences a documented chronic medical condition requiring long term care or a condition anticipated to result in the death of a family member after the adoptive placement of a child, the Contractor shall be eligible for a per-diem rate. The payment shall be a portion of the appropriate rate for finalization, which shall be established by dividing the duration (number of days) of the adoptive placement until disruption by 182 days. The disruption rate shall not exceed the rate that would have otherwise been paid had finalization occurred.
- 2) Death of an Adoptive Child: In cases where a child dies between order placing in the adoptive home and the final order of adoption, the Contractor shall be eligible for a per-diem from the date of placement to the date of death (unless cause of death is determined to be neglect or abuse) not to exceed the rate that would have otherwise been paid had finalization occurred.
- 3) Disruption after Order Placing Child in the adoptive home: When the

Agreement Number: A17-63011

Amendment Number: 1

disruption order is issued more than 182 days from the date of the order placing the child in the adoptive home, the Contractor shall be paid the full finalization rate.

- 4) Disruption of Placement Determined by MCI Superintendent: In a case where the child is placed in a home based on the decision of the MCI Superintendent, against the recommendation of the Contractor, the Contractor shall be eligible for a per-diem rate. The payment shall be a portion of the appropriate rate for finalization, which shall be established by dividing the duration (number of days) of the adoptive placement until disruption by 182 days. The disruption rate shall not exceed the rate that would have otherwise been paid had finalization occurred. Payment for subsequent placements will not reflect a disruption.

e. Adoption Dissolution

MDHHS shall recover, from the Contractor, the Permanency Unit Rate for adoptions that end in dissolution within 182 days of issuance of an Order of Adoption.

f. Payment – Re-Placement of Child after Disruption by Same Contractor

Re-placement of child photo listed on MARE or from a Residential facility:

Subsequent adoptive placement and finalization by the same Contractor (that placed the child in the disrupted/dissolved home) for a child previously reimbursed at one of the MARE rates or the Residential rate, shall not exceed the Baseline rate for a second adoptive placement/finalization. The maximum rate for any re-placement of a child photo listed on MARE or from a Residential facility beyond the second placement shall not exceed the Late Adoption Penalty Level 3 rate if paid to the same Contractor.

Re-placement by the same Contractor of a child under any rate other than a MARE or Residential rate shall not exceed the Baseline rate.

Exceptions may be made to the re-placement rate. The Contractor must submit documentation of efforts that were required to prepare a child for subsequent placement and the recruitment of an adoptive family. Submit request for exceptions to the Adoption Analyst in MDHHS Central Office and stipulate the rate requested.

g. Unit Definitions

- 1) Unit Title: Per Diem Payments

Agreement Number: A17-63011

Amendment Number: 1

For each child where the adoption case is referred to the Contractor by MDHHS, the Contractor shall receive payment of \$20.00 per diem for each day of adoptive services from acceptance of the case (signed DHS 3600 for cases referred on or after October 2016, or earlier if applicable) to date of the signed documentation from the court (DHS 5308 or petition date stamped from the court) verifying that the court has accepted the adoption petition and support documentation, or for one hundred fifty (150) days, whichever comes first. The maximum per diem payment amount per child is \$3,000.

The total amount paid for the per diem rate will be deducted from the applicable placement rate when the child is placed for adoption.

The Contractor must submit the signed Individual Service Agreement (DHS-3600) (for Adoption Services) with the effective date indicated, the completed Adoption Payment Voucher (DHS-1582A), verification from MARE that either a complete photo listing or a complete hold registration was submitted to MARE on the case, and the signed DHS-4809 (if applicable).

For adoption cases referred on or after October 2016, the Contractor may bill for the full per diem amount of \$3,000. In the event that the Contractor receives the full per diem amount on a case which is not assigned to the Contractor for 150 days, the Contractor will be responsible for repayment of the per diem at a rate of \$20.00 for each day in which they received a per diem payment and were no longer assigned to the case.

2) Unit Title: Placement

All unit definitions below are based on the length of time from the receipt of the written order from the court terminating all parental rights or, the date on which the DHS-3600 is fully executed, whichever is later; to the date of the signed documentation from the court (DHS 5308 or petition or petition date stamped from the court) verifying that the court has accepted the adoption petition and support documentation.

If the child's goal changes from adoption to another goal and then changes back to the goal of adoption, the Contractor must obtain a new DHS-3600 for adoption services for the updated goal of adoption.

The Contractor must submit the Order Terminating Parental Rights, signed and dated documentation from the court (DHS 5308 or petition date stamped from the court) verifying the date that the court has accepted the adoption petition and support documentation, the Adoption Petition documentation and the Acceptance of Case Transfer

Agreement Number: A17-63011

Amendment Number: 1

documents (DHS3600) if applicable. The document indicating the date of acceptance must be signed by a MDHHS representative as verification. If there was a per diem payment for the case prior to placement the Contractor must note "per diem billed" in box 13 of the DHS-1582A.

3) Unit Title: Finalization

Unit Definition: One unit equals receipt of an Order of Adoption for a child for whom a Placement rate was paid.

4) Unit Title: Permanency

Unit Definition: One unit equals an adoption that does not end in dissolution within 182 days of the issuance of an Order of Adoption. The Permanency Unit Rate shall be paid at the same time as the Finalization Unit Rate. The Contractor will be responsible for repayment of the Permanency Unit Rate for those cases for which the adoption ended in dissolution.

5) Unit Title: Early Adoption – Level 2

Unit Definition: The DHS-5308 or Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court one hundred eighty (180) or fewer days after the date of placement as defined in Subsection 3.1.g11 above.

6) Unit Title: Early Adoption - Level 1

Unit Definition: The DHS-5308 or Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed by the court more than one hundred eighty (180) days but two hundred forty(240) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

7) Unit Title: Baseline

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court more than two hundred forty (240) days, but three hundred (300) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

8) Unit Title: Late Adoption - Level 1

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court more than three hundred (300) days, but three hundred sixty-five (365) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

Agreement Number: A17-63011

Amendment Number: 1

9) Unit Title: Late Adoption - Level 2

Unit Definition: The DHS 5308 or Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court more than three hundred sixty-five (365) days, but five hundred forty-five (545) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

10) Unit Title: Late Adoption - Level 3

Unit Definition: The Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court more than five hundred forty-five (545) days, but seven hundred thirty (730) or fewer days after the date of placement as defined in Subsection 3.1. g. ii above.

11) Unit Title: Late Adoption – Level 4

Unit Definition: The Adoption Petition documentation or Order Placing Child, whichever is earliest, is signed and dated by the court more than seven hundred thirty (730) days after the date of placement as defined in Subsection 3.1.g.ii above.

12) Unit Title: MARE

Unit Definition: The Order Placing Child is signed and dated by the court for a child who has been registered for photo listing on MARE.

The Contractor is not eligible for the MARE rate if the Contractor photo lists the child. The exception to allow for payment of the MARE rate to the supervising agency requires the Contractor to submit a written request verifying that the child was photo listed for six (6) months and documentation must be provided to demonstrate the family is a newly approved recruited family and the following conditions are true:

- a. The identified family is not a relative or foster parent to the adoptive child.
- b. The identified family has either not previously provided care for the child or has previously provided care and during the time that the child was photo listed had indicated in writing that they were not interested in adopting the child. The written document from the family must be submitted with the MARE payment request.

The Contractor is eligible for the MARE rate if the child's foster care case remains with MDHHS and, at the time of referral, there was no identified adoptive resource. The Contractor must register the child for photo listing within 30 days of acceptance of the case if no adoptive resource has been identified. If the Contractor applies for the

Agreement Number: A17-63011

Amendment Number: 1

MARE rate there must be a written explanation of why the adoptive family was not identified as a potential adoptive resource within the first 30 days after acceptance of the case.

13) Unit Title: Residential

Unit Definition: The Order Placing Child is signed and dated by the court for a child who has been placed in residential care (defined as staffed institutional care, not including foster group homes) and the child is under the Contractor's supervision for Adoption Services.

14) Unit Title: MARE and Residential Rate with Pre-placement

Unit Definition: When a child photo-listed with MARE or in a Residential facility is placed into a prospective adoptive home through a foster care placement to allow for a period of adjustment and supervision (prior to petition to place for adoption), the reimbursement for the appropriate rate shall be calculated based on the date the pre-placement began.

The MARE, and Residential Rate will be applied when the court signs the Order Placing Child within two hundred seventy (270) days of placing the child in the home for foster care services.

15) Unit Title: In-State Transfer Services

Unit Definition: The Contractor completes satisfactory services requested for pre-placement activities for a child under the supervision of the Contractor and referred for adoptive placement to another contractor or MDHHS local office. The MDHHS monitor for the foster care case shall define satisfactory services.

16) Unit Title: Interstate Existing Services

Unit Definition: A child under the adoption services supervision of the Contractor is referred for adoptive placement through a private or public agency in the state where the adoptive family resides and the child has previously been placed with the family through Interstate foster/relative care prior to termination of parental rights and assignment of an adoption worker.

17) Unit Title: Interstate New Services

Unit Definition: A child under the adoption services supervision of the Contractor is referred for adoptive placement through a private or public agency in the state where the adoptive family resides and the child has not been placed with the family through Interstate foster/relative care prior to termination of parental rights and assignment of an adoption worker.

Agreement Number: A17-63011

Amendment Number: 1

18) Unit Title: ICPC Referred from Other U.S. States

A child under the child welfare system of another ICPC participating state is referred to Michigan for adoption services through ICPC. DHS-3600 (for Adoption Services) is required from the local Michigan county.

19) Unit Title: Competing Parties

More than one party is interested in adopting a particular child or sibling group and is assessed by the contractor in one of the following formats: Preliminary Adoptive Family Assessment, BCAL 3130 Initial Foster Home/Adoption Evaluation, or DHS 612, Adoptive Family Assessment Addendum. The rate paid on a competing parties' case shall not fall below the "Baseline" rate category, unless an agency has failed to act according to the timeframes outlined in policy.

h. Adoption Training Payments

A payment will be made to the Contractor for each staff that completes adoption training and passes competency tests as required:

1) Completion of the Caseworker Training

Payment will be \$6,000 for completion of a MDHHS Pre-Service Institute training that includes a total of nine weeks of competency-based classroom and field training within 16 weeks of hire.

2) Completion of the Child Welfare Certificate (CWC) Training

Payment will be a maximum of \$3,000, calculated on an actual cost reimbursement basis, for completion of the Office of Workforce Development and Training (OWDT)-CWC training. This training includes a minimum of five weeks of competency-based classroom, and field training if the caseworker certificate holder passes the competency evaluation.

3) Completion of the Child Welfare Supervisor Training.

Payment will be a maximum of \$1500, calculated on an actual cost reimbursement basis for completion of the Supervisor Training. This includes a minimum of one week of training within 90 days of hire/promotion if the supervisor passes the competency-based evaluation including the written exam through OWDT.

All supervisors hired on or after January 1, 2017 must complete the Supervisor Training and pass the competency evaluation.

Agreement Number: A17-63011

Amendment Number: 1

- 4) Completion of the adoption Program Specific Transfer Training (PSTT) within 6 months of hire.

Payment will be a maximum of \$2,800, calculated on an actual cost reimbursement basis for completion of the adoption PSTT training. This training is the same as the Adoption Core Training for adoption caseworkers. If a supervisor has completed this training as a caseworker since April 1, 2006, the training does not need to be repeated. If a supervisor has not completed this training since April 1, 2006, they need to complete this PSTT Training within 6 months of hire.

- i. For all Contractor staff hired on or after May 1, 1998 attending required OWDT-PSI, PSTT, and supervisor training, MDHHS-OWDT shall reimburse the Contractor at the Contractor's normal rate of reimbursement or State rates, whichever is less for staff trainee expenditures incurred as part of OWDT attendance. MDHHS-OWDT does not cover travel reimbursement for in-service training. Travel reimbursement shall be limited to lodging, mileage and parking and bridge toll with the following conditions:
 - 1) For each trainee who attends the training session, MDHHS shall reimburse the Contractor up to five nights (Sunday night thru Thursday night) lodging per week if lodging expense is incurred. If training continues for two consecutive weeks or longer and the cost of lodging is less than the mileage cost to travel to and from the Contractor's facility over the intervening weekend, the Contractor may request the director of OWDT in advance for a travel exception for weekend lodging.
 - 2) For each mile of travel to an OWDT training session closest to the Contractor's site, MDHHS shall reimburse the Contractor for mileage to and from the training and the trainee's assigned work location or home, whichever is closer. The applicable State rate for mileage shall be the lesser of the Contractor's prevailing rate or the State's standard rate.
 - 3) Parking shall be reimbursed at one-time daily parking or continuous daily metered parking actual cost, documented with a receipt.
 - 4) MDHHS shall not reimburse travel costs for Contractor staff who attend more than one session (i.e., are required to repeat attendance due to absence or failure to successfully complete a session) without prior approval from DCWL. Refer to the OWDT web site for current reimbursement information for OWDT training at http://www.michigan.gov/mdhhs/0,5885,7-339-71551_11120_74572---,00.html

Agreement Number: A17-63011

Amendment Number: 1

Classroom Training Payment

- 1) The Contractor must submit a signed and dated agency letterhead memo attached to the DHS-1582 Payment Voucher that includes the following information:
 - a) Worker name
 - b) Training, type, i.e. PSST, PSI etc.
 - c) Training dates (time span in training)
 - d) Amount of reimbursement requested.
 - e) A copy of the transcript reflecting the completion of the training for each adoption worker and supervisor covered by the payment voucher. This is required before accounting will issue payment.
 - f) Memo signed by senior management; not the individual who attended training confirming that 50% of the adoption workers caseload will be children in the MDHHS foster care system.

- 2) The information must be submitted to:

MDHHS
Office of Child Welfare Policy & Programs
PO Box 30037
235 S. Grand Ave., Ste. 514
Lansing, MI 48909

Training Travel Reimbursement

- 1) The Contractor must submit:
 - a) Certification letter on agency letterhead signed and dated by senior management to include:
 - i. Agency Federal ID Number
 - ii. Exact trainee name as registered in the Learning Management System
 - iii. Exact class name
 - iv. Beginning and ending travel dates
 - v. Amount of reimbursement requested
 - b) DHS-1582 Payment Voucher.
 - c) DHS-1582 TV-NSE for each trainee.
 - d) MapQuest (or equivalent) printouts for each travel route.
 - e) All original receipts.
 - f) Transcripts showing the training completed.
- 2) Please submit the above training travel reimbursement information to:

Agreement Number: A17-63011

Amendment Number: 1

Ingham County MDHHS/OWDT
Attention: Travel Reimbursement
PO Box 30088
5303 S. Cedar Street – Building 3
Lansing, MI 48911

Or email package to: MDHHS-OWDTtrainingvouchers@michigan.gov

- j. The costs of all services provided under this Agreement are included in the above rate(s) unless otherwise noted in this Agreement.

3.2. Performance Evaluation and Monitoring

The services provided by the Contractor under this Agreement shall be evaluated and assessed at least annually by MDHHS on the basis of the criteria outlined in Section 2.11.

MDHHS shall perform contract monitoring through activities such as:

- a. Auditing expenditure reports.
- b. Conducting on-site monitoring.
- c. Reviewing and analyzing written plans and reports.

EXHIBIT 12

Smith v. Gristina, Not Reported in F.Supp.2d (2012)

2012 WL 247017

2012 WL 247017
Only the Westlaw citation is currently
available.

United States District Court,
S.D. New York.
Andrew SMITH, Plaintiff,
v.
Joseph GRISTINA, Gretchen Gristina,
County of Orange, and the McQuade
Foundation,¹ Defendants.

¹ In the caption to the complaint, plaintiff referred to this defendant as the “Mqade Foundation.” All other references to this defendant, including references in its papers, call it the “McQuade Foundation.” The Clerk is requested to correct this spelling in the case caption and Court documents.

No. 11 CV 2371(VB).
|
Jan. 6, 2012.

MEMORANDUM DECISION

BRICCETTI, District Judge.

***1** Plaintiff Andrew Smith commenced this action against Joseph Gristina, Gretchen Gristina, County of Orange, and the McQuade Foundation (“McQuade”) relating to his claims that he was sexually abused by Ms. Gristina while living in her home as a foster child. The Gristinas, Orange County, and McQuade have each filed a motion to dismiss (Docs.# 11, 15, 25). This decision will only address the Gristinas’ motion.² For the following reasons, the Gristinas’ motion is GRANTED.

² Defendants Orange County and McQuade request that their motions be deemed motions for summary judgment. Because those motions require the Court to review materials outside the pleadings, they will be addressed in a separate ruling.

The Court has subject matter jurisdiction pursuant

to 28 U.S.C. § 1331.

BACKGROUND

For purposes of ruling on the motion, the Court accepts all factual allegations of the complaint as true. The Court only recounts those allegations that relate to the claims against the Gristinas.

In 1994, at the age of four, plaintiff Andrew Smith was removed from the care of his biological mother by the Orange County Department of Social Services (“DSS”). He was placed in the custody of his biological father in 1995 until 2000. Plaintiff was then sent to live with his aunt.

At the age of 12, plaintiff was removed from his aunt’s home by the Orange County Children’s Protective Services for acting out inappropriately. On September 23, 2002, plaintiff’s father’s parental rights were terminated, and he was given to the care and custody of DSS. He was placed in two foster homes between that time and May 2006.

In May 2006, Ms. Gristina submitted a request to DSS to be plaintiff’s foster parent with a goal of adoption. Plaintiff was friends with Ms. Gristina’s son. The Gristinas had suggested the possibility of adopting plaintiff, and plaintiff “jumped at the chance.” Plaintiff was not related to the Gristinas, nor did the Gristinas have any prior experience or training as foster parents prior to their request to become plaintiff’s foster parents. The Gristinas’ home was not a certified foster home, and the Gristinas were not licensed foster parents at the time the request was made.

Plaintiff was placed in the Gristinas’ home on July 6, 2006. This was before the Gristinas’ home could be certified as required by law, before the proper licensing of the Gristinas as foster parents, before the proper training for the Gristinas, and before the proper investigation and evaluation of the Gristinas as required by law. Orange County, DSS and McQuade falsified documents to reflect plaintiff’s placement in the Gristinas’ home as an “emergency relative placement.” There was no such emergency, and the Gristinas were not “relative to the third degree” to plaintiff.

Plaintiff was placed in the Gristinas’ home on July

Smith v. Gristina, Not Reported in F.Supp.2d (2012)

2012 WL 247017

7, 2006. Plaintiff alleges, upon information and belief, that Ms. Gristina began sexually abusing him within weeks of the placement. The sexual abuse continued for more than one year.

In May 2007, plaintiff informed DSS that he did not want to be adopted by the Gristinas. The sexual abuse continued, and he was removed from the home in January 2008.

DISCUSSION

*2 The function of a motion to dismiss is “merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof.” *Ryder Energy Distrib. v. Merrill Lynch Commodities, Inc.*, 748 F.2d 774, 779 (2d Cir.1984). When deciding a motion to dismiss, the Court must accept all well-pleaded allegations as true and draw all reasonable inferences in favor of the pleader. *Hishon v. King*, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984). The claims must contain the grounds upon which the claim rests through factual allegations sufficient “to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). A pleader is obliged to amplify a claim with some factual allegations to allow the court to draw the reasonable inference that the defendant is liable for the alleged conduct. *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009). Conclusory allegations are not entitled to deference by the Court. *Id.*, 129 S.Ct. at 1949–50 (“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.”).

Plaintiff asserts two claims under 42 U.S.C. § 1983 against the Gristinas, both of which allege they violated his rights under the Fourteenth Amendment by failing to protect him from sexual abuse. Plaintiff specifically alleges the Gristinas were agents of Orange County. The Gristinas move to dismiss arguing they were not acting as state actors. Mr. Gristina also contends that any claims against him are estopped by the resolution on the merits of a previous state court action.

To state a claim for relief under Section 1983, plaintiff must allege that defendants, acting under color of state law, deprived him of a

constitutionally or federally protected right. See *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 930, 102 S.Ct. 2744, 73 L.Ed.2d 482 (1982); *Washington v. James*, 782 F.2d 1134, 1138 (2d Cir.1986). An individual acts under color of state law when he exercises “some right or privilege created by the State ... or by a person for whom the State is responsible,” and is “a person who may fairly be said to be a state actor.” *Lugar*, 457 U.S. at 937. To sustain a claim under Section 1983, plaintiff must first allege that defendants acted under color of state law. *Syabalski v. Indep. Grp. Home Living Program, Inc.*, 546 F.3d 255, 257 (2d Cir.2008). If the actions at issue were not state action, the Court’s inquiry ceases. State action occurs when (1) the deprivation is caused by the exercise of some right or privilege created by the state or by a rule of conduct imposed by the state or by a person for whom the state is responsible, and (2) the party charged with the deprivation is a person who may fairly be said to be a state actor. *Den Hollander v. Copacabana Nightclub*, 624 F.3d 30, 33 (2d Cir.2010).

For the actions of a private entity to be attributable to the state, those actions must meet one of three tests laid out by the Supreme Court: (1) the “compulsion” test, where an entity acts pursuant to the coercive power of the state; (2) the “public function” test, where the state has delegated a public function to the entity; or (3) the “joint action” or “close nexus” test, where the state provides “significant encouragement” to the entity, the entity is a “willful participant in joint activity with the [s]tate,” or the entity’s functions are “entwined” with state policies. *Syabalski v. Indep. Grp. Home Living Program, Inc.*, 546 F.3d at 257–58 (citing *Brentwood Acad. v. Tenn. Secondary Sch. Ath. Ass’n*, 531 U.S. 288, 296, 121 S.Ct. 924, 148 L.Ed.2d 807 (2001)). Plaintiff must establish that the state was involved in the specific activity giving rise to his cause of action; it is not enough to show merely that the state was involved in some activity of the private entity. *Syabalski*, 546 F.3d at 257–58.

*3 Plaintiff asserts the Gristinas collaborated with the County and McQuade to fabricate an emergency for which the placement was necessary. This, however, is not the gravamen of the conduct alleged in the complaint. The allegations are that Ms. Gristina sexually abused plaintiff. Moreover, there are no direct allegations against Mr. Gristina except that he failed to stop such abuse.

Smith v. Gristina, Not Reported in F.Supp.2d (2012)

2012 WL 247017

Courts of Appeals that have examined whether foster parents are state actors under Section 1983 have resoundingly answered in the negative. See *Hafez v. Madison*, 348 Fed. Appx. 465, 467 (11th Cir.2009) (“[F]oster parents are not state actors for section 1983 purposes.”); *United States v. Peneaux*, 432 F.3d 882, 896 (8th Cir.2005) (“[F]oster parents are generally not considered agents of the state.”); *Leshko v. Servis*, 423 F.3d 337 & n. 3 (3d Cir.2005); *Rayburn v. Hogue*, 241 F.3d 1341 & n. 10 (11th Cir.2001); *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387, 392 (4th Cir.1990) (“[H]arm suffered by a child at the hands of his foster parents is not harm inflicted by state agents.”); *Milburn v. Anne Arundel County Dep’t of Soc. Servs.*, 871 F.2d 474, 479 (4th Cir.1989) (holding that foster parents were not state actors because state “exercised no coercive power over [foster parents]; neither did it encourage them”); *Malachowski v. Keene*, 787 F.2d 704, 710 (1st Cir.1986) (finding private agency which made foster homes available for state agencies was not a state actor under Section 1983); see also *Lynn v. St. Anne Inst.*, 2006 U.S. Dist. LEXIS 18786, 2006 WL 516796 (N.D.N.Y. Mar. 2, 2006) (finding foster care institution was not state actor under Section 1983).

Plaintiff’s allegations fail under all three tests of *Brentwood Acad.* because he cannot establish state involvement in the decision to assault him sexually. He cannot meet the “compulsion” test because no federal, state, or local official was involved in his abuse at the hands of Ms. Gristina. His claim also fails under the “public function” test because foster placements are not, in New York, the exclusive province of the state. See *Lynn v. St. Anne Inst.*, 2006 U.S. Dist. LEXIS 18786, at *43–44, 2006 WL 516796 (“New York’s Family Court Act suggests that New York is not, and has not been, the exclusive provider of foster care. Many options remain available to children who are adjudicated to be in need of supervision.”); see also *Arneth v. Gross*, 699 F.Supp. 450, 451 (S.D.N.Y.1988) (“New York has historically depended upon non-governmental child-care

facilities for the care of children outside their homes. As the various waves of immigrants came to New York over many decades, many of these child-care institutions operated and continue to operate under sectarian auspices.”); *Rendell-Baker v. Kohn*, 457 U.S. 830, 842, 102 S.Ct. 2764, 73 L.Ed.2d 418 (1982). Further, the mere operation of a nonprofit public service agency, even with the use of government funds, does not constitute state action. See *Archer v. Econ. Opportunity Comm’n of Nassau Cnty., Inc.*, 30 F.Supp.2d 600, 606 (E.D.N.Y.1998); *Rendell-Baker v. Kohn*, 457 U.S. at 840 (“Acts of such private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts.”).

*4 Because plaintiff has not properly pleaded the Gristinas were acting as state actors during the relevant time, and the Court concludes that as a matter of law the Gristinas could not be construed to be state actors, the Court dismisses plaintiff’s Section 1983 claims against the Gristinas with prejudice. The Section 1983 claims being the only claims asserted against the Gristinas, all claims against them are hereby dismissed.

CONCLUSION

For the foregoing reasons, the Gristinas’ motion to dismiss (Doc. # 11) is GRANTED. The Clerk is instructed to terminate the pending motion (Doc. # 11) and to terminate Joseph Gristina and Gretchen Gristina as defendants in this action.

SO ORDERED.

All Citations

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EXHIBIT 13

Honorable Merle Boucher, 2003 N.D. Op. Atty. Gen. L-18 (2003)

2003 N.D. Op. Atty. Gen. L-18 (N.D.A.G.), 2003 WL 1829244

Office of the Attorney General

State of North Dakota
Letter Opinion No. 2003-L-18
March 19, 2003

*1 Honorable Merle Boucher
House Minority Leader
600 E Boulevard Ave
Bismarck, ND 58505

Dear Representative Boucher:

Thank you for your March 5, 2003, letter requesting my opinion regarding the constitutionality of Senate Bill No. 2188.

Once enacted “[a] statute is presumptively correct and valid, enjoying a conclusive presumption of constitutionality unless clearly shown to contravene the state or federal constitution.” [Traynor v. Leclerc](#), 561 N.W.2d 644, 647 (quoting [State v. Ertelt](#), 548 N.W.2d 775, 776 (N.D. 1996)). Because it is the Attorney General’s role to defend statutory enactments from constitutional attacks, this office has been reluctant to issue an opinion questioning the constitutionality of a statutory enactment. Accordingly, absent controlling case law to the contrary, this office will not declare that a bill, if enacted, would be unconstitutional. In this case there is substantial case law that supports the constitutionality of SB 2188.

SENATE BILL NO. 2188

Senate Bill No. 2188 would amend [N.D.C.C. § 50-12-03](#) and create a new section to chapter 50-12. [Section 50-12-03](#) relates to licensure for child-placing agencies. The amendment would provide that “[t]he department of human services may not deny a license because of the applicant’s objection to performing, assisting, counseling, recommending, facilitating, referring, or participating in a placement that violates the applicant’s religious or moral convictions or policies.” The new section to chapter 50-12 would read:

Objection to placement for religious or moral convictions or policies - Immunity - Effect. A child-placing agency is not required to perform, assist, counsel, recommend, facilitate, refer, or participate in a placement that violates the agency’s religious or moral convictions or policies. A state or local government entity may not deny a child-placing agency any grant, contract, or participation in a government program because of the child-placing agency’s objection to performing, assisting, counseling, recommending, facilitating, referring, or participating in a placement that violates the child-placing agency’s religious or moral convictions or policies. A child-placing agency is not civilly or criminally liable for refusing to perform, assist, counsel, recommend, facilitate, refer, or participate in a placement that violates the child-placing agency’s religious or moral convictions or policies. Refusal by a child-placing agency to perform, assist, counsel, recommend, facilitate, refer, or participate in a placement that violates the child-placing agency’s religious or moral convictions or policies does not constitute a determination that the proposed adoption is not in the best interest of the minor.

Senate Bill No. 2188 can be referred to as a “conscience clause” - a statute intended to protect child-placing agencies’ rights to refuse to provide or participate in activities to which the agencies have moral or religious objections. “Congress and most state legislatures have enacted ‘conscience clauses’ ... to protect health care providers’ rights to refuse to provide or participate in certain procedures to which they have moral or religious objections.” Lynn D. Wardle, J.D., [Protecting the Rights of Conscience of Health Care Providers](#), 14 *J. Legal Med.* 177 (June 1993). The North Dakota Legislature has enacted a conscience clause to prevent health care providers from having to participate in the performance of an abortion. [N.D.C.C. § 23-16-14](#). Similarly, the intent of SB 2188 appears to be to protect child-placing agencies from having to perform or participate in

Honorable Merle Boucher, 2003 N.D. Op. Atty. Gen. L-18 (2003)

placement related activities that violate an agency's religious or moral convictions or policies.

CONSTITUTIONAL ACCOMMODATION OF RELIGIOUS PRACTICES

*2 Chapter 50-12, N.D.C.C., provides for licensure and regulation of child-placing agencies.¹ Compared to other jurisdictions, N.D.C.C. ch. 50-12 places very few burdens or restrictions on child-placing agencies. Although [N.D.C.C. § 50-12-05](#) permits the Department of Human Services to adopt rules regarding placements, the Department has not done so. Based upon my review of N.D.C.C. ch. 50-12, permitting a child-placing agency to elect not to perform or participate in a placement or associated activity would not be contrary to any requirement in N.D.C.C. ch. 50-12. In other words, it does not appear that enactment of SB 2188 exempts child-placing agencies from any current licensure law or regulation.

Absent unusual circumstances, a child-placing agency is a "public accommodation" subject to the North Dakota Human Rights Act, N.D.C.C. ch. 14-02.4. Among other things, N.D.C.C. ch. 14-02.4 prohibits discriminatory practices in public accommodations. Senate Bill No. 2188 would exempt a child-placing agency from the requirements of N.D.C.C. ch. 14-02.4 to the extent the child-placing agency elects not to perform or participate in placement related activities because the placement or placement related activities violate the child-placing agency's religious or moral convictions or policies.

United States Supreme Court case law indicates that exempting child-placing agencies from licensure or other statutory requirements on religious grounds is constitutional. In [Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos](#), 483 U.S. 327 (1987), the Supreme Court addressed the constitutionality of the religious exemption to Title VII's prohibition against religious discrimination in employment to secular non-profit activities of religious organizations. Section 702 of the Civil Rights Act of 1964 exempts religious organizations from Title VII's prohibition against discrimination in employment on the basis of religion. The Court noted the tension inherent in the Establishment Clause and the Free Exercise Clause of the First Amendment:

This Court has long recognized that the government may (and sometimes must) accommodate religious practices and that it may do so without violating the Establishment Clause." It is well established, too, that "[t]he limits of permissible state accommodation to religion are by no means co-extensive with the noninterference mandated by the Free Exercise Clause." There is ample room under the Establishment Clause for "benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.

Id. at 334 (citations omitted). The Court then proceeded to apply the Lemon test² and found § 702 constitutional.

The first factor in the Lemon test requires that the law have a "secular legislative purpose." Id. at 335. As explained by the Court, "[t]his does not mean that the law's purpose must be unrelated to religion—that would amount to a requirement 'that the government show a callous indifference to religious groups,' and the Establishment Clause has never been so interpreted." Id. (quoting [Zorach v. Clauson](#), 343 U.S. 306, 314 (1952)). Rather the aim of the first prong of the Lemon test is to prevent the relevant governmental decision maker "from abandoning neutrality and acting with the intent of promoting a particular point of view in religious matters." Id. The Court then held that "it is a permissible legislative purpose to alleviate significant governmental interference with the ability of religious organizations to define and carry out the religious mission." Id.

*3 The second part of the Lemon test requires that the law neither advance nor inhibit religion. Id. at 336. The Court explained: "A law is not unconstitutional simply because it allows churches to advance religion, which is their very purpose. For a law to have forbidden 'effects' under Lemon, it must be fair to say that the government itself has advanced religion through its own activities and influence." Id. at 337. Section 702 satisfied the second prong of the Lemon test because it "is rationally related to the legitimate purpose of alleviating significant governmental interference with the ability of religious organizations to define and carry out their religious missions." Id. at 339.

Honorable Merle Boucher, 2003 N.D. Op. Atty. Gen. L-18 (2003)

The final prong of the Lemon test is that the law may not foster an excessive entanglement of the state with religion. Id. The Court held that Section 702 easily passes this part of the Lemon test because it actually “effectuates a more complete separation” of church and state by avoiding intrusive inquiry into the religious beliefs of the religious organization. Id.

Relying on the Amos decision, the Fourth Circuit Court of Appeals upheld a regulation which exempted church-run childcare centers from licensing requirements. Forest Hills Early Learning Ctr., Inc. v. Grace Baptist Church, 846 F.2d 260 (4th Cir. 1988), cert. denied, 488 U.S. 1029 (1989). The court explained that it did “not discern any distinctions that would justify a result in this case different from that reached in Amos.” Id. at 264. Rather, exempting church-run childcare centers from licensure was even more justified than the employment practice in Amos. “Indeed, if an exemption is permissible in the context of employment practices in a gymnasium, one can only be more solidly justified where it acts to prevent state interference with church programs that provide education and care for children.” Id.

Although decided prior to the Amos decision, another federal court held Arkansas statutes relating to religious childcare facilities licensing exemptions constitutional in Arkansas Daycare Ass’n v. Clinton, 577 F. Supp. 388 (E.D. Ark. 1983). Like in Amos, the Court in Arkansas Daycare Ass’n identified the conflict between the Establishment Clause and the Free Exercise Clause:

The First Amendment contains not one, but two limitations on the powers of government concerning matters of religion. While governments are prohibited from making any law “respecting an establishment of religion”, they are, likewise, prevented from “prohibiting the free exercise thereof.” The usual application of Lemon fails to recognize the State’s interest in preserving the free exercise of religious freedoms.

Id. at 395.

Noting that the United States Supreme Court has stated that “the Free Exercise Clause and Establishment Clause overlap and that maintenance of neutrality is difficult,” the court explained that “[r]eligion and secular governmental regulation must coexist. Between the twin boundaries of the religion clauses lies a zone of permissible state regulation.” Id. at 395. According to the court:

*4 The width of the zone varies with the weight of the State’s interests balanced against the affected religious beliefs. While regulating in this zone, the State may make legitimate accommodations of religious beliefs. If the State does not regulate because it recognizes a religious belief, then it accommodates that belief. Thus, regulation and accommodation may vary inversely. Under-regulation may result in an over-accommodation and vice versa. In drawing the line between regulation and accommodation, the State must be particularly careful to recognize its role of neutrality.

Id. at 395-96 (citations omitted).

The court concluded that the “exemption from the formality of obtaining a license is a reasonable accommodation to the religious beliefs recognized by the legislature.” Id. at 396.

More recently, in Children’s Healthcare is a Legal Duty, Inc. v. Min De Parle, 212 F.3d 1084 (8th Cir. 2000), cert. denied, 532 U.S. 957 (2001), the Eighth Circuit Court of Appeals held that exceptions to the Medicare and Medicaid Acts for persons who have religious objections to the receipt of medical care did not violate the Establishment Clause. Applying the Lemon test and relying upon the Amos decision, the court held the exceptions constituted permissible accommodations of religion. Id. at 1099.

Also in 2000, the Fourth Circuit Court of Appeals held a county zoning ordinance that exempted parochial schools from a special exception requirement was valid under the Establishment Clause. Ehlers-Renzi v. Connelly Sch. of the Holy Child, Inc., 224 F.3d 283 (4th Cir. 2000), cert. denied, 531 U.S. 1192 (2001). In

Honorable Merle Boucher, 2003 N.D. Op. Atty. Gen. L-18 (2003)

doing so, the court wrote:

But the prohibition against the establishment of religion does require government neutrality toward religion and among religions. And this neutrality may be a “benevolent neutrality.” Indeed, the government is entitled to accommodate religion without violating the Establishment Clause, and at times the government must do so.

....

This authorized, and sometimes mandatory, accommodation of religion is a necessary aspect of the Establishment Clause jurisprudence because, without it, government would find itself effectively and unconstitutionally promoting the absence of religion over its practice.

Id. at 287 (citations omitted). See also [Cohen v. City of Des Plaines](#), 8 F.3d 484 (7th Cir. 1993) (rejecting a constitutional challenge to a zoning ordinance exempting church daycare centers from the requirement of obtaining a special use permit), cert. denied, 512 U.S. 1236 (1994).

The North Dakota Supreme Court’s language in [Best Products Co. v. Spaeth](#), 461 N.W.2d 91, 101 (N.D. 1990), is instructive. In [Best Products](#), the court upheld North Dakota’s Sunday closing law. Addressing an Establishment Clause challenge, the court explained that “the accommodation of religious practices is a proper legislative end.” Id. The court further explained:

*5 If the statute removes burdens placed on religious practitioners without directly advancing or inhibiting religion, and without excessively entangling the government with religion, the statute does not violate the constitution. To work this accommodation, the legislature can benefit religious groups; special consideration given to religious groups is not per se invalid.

Id.

The cited case law supports the constitutionality of SB 2188. It is constitutionally permissible for the North Dakota Legislative Assembly to recognize religious beliefs of child-placing agencies. And it is constitutionally permissible for the Legislature to make accommodations for those beliefs. By permitting child-placing agencies to not participate in placement activities that violate their religious or moral convictions or policies, SB 2188 permissibly accommodates the religious or moral beliefs of child-placing agencies.

CHILD-PLACEMENT AGENCY NOT A STATE ACTOR

The Constitution protects against government action, not action by a private corporation or citizen. See [Rendell-Baker v. Kohn](#), 457 U.S. 830, 837 (1982) (stating “the Fourteenth Amendment, which prohibits the states from denying federal constitutional rights and which guarantees due process, applies to acts of the states, not to acts of private parties or entities”); [Bolinske v. North Dakota State Fair Ass’n](#), 522 N.W.2d 426, 430 (N.D. 1994) (“The guarantee of free speech under the First Amendment is a guarantee only against abridgement by government, federal or state; it provides no protection against infringement by a private corporation or person.”); [City of Jamestown v. Beneda](#), 477 N.W.2d 830, 834 (N.D. 1991) (same). Thus, a question regarding the constitutionality of SB 2188 necessarily raises the issue of whether a licensed child-placement agency is acting on behalf of the State. Court decisions reach different results regarding whether adoption agencies are state actors. A distinguishing factor in the results is to what extent state laws or regulations dictate the action of the child-placement agency.

In a thorough and well-reasoned decision, the Tenth Circuit Court of Appeals held adoption centers licensed by Utah are not state actors. [Johnson v. Rodrigues](#), 293 F.3d 1196 (10th Cir. 2002), cert. denied, 123 S.Ct. 893 (2003). Significant factors relied upon by the court in reaching its conclusion were that there was minimal state involvement in the adoption process, the state did not exercise coercive power on the adoption center, and there was no cooperative action between the state and the adoption center. Id. at 1203-05.

Honorable Merle Boucher, 2003 N.D. Op. Atty. Gen. L-18 (2003)

The opposite result was reached in [Scott v. Family Ministries](#), 135 Cal. Rptr. 430 (Cal. Ct. App. 1977). In [Scott](#), the court found the activity of a licensed adoption agency was state action because of the state authority and power delegated to the agency under California's statutory scheme. [Id.](#) at 438. A distinguishing factor in [Scott](#) is that the adoption agency's decision was controlled by a specific state law. [Id.](#) at 437.

*6 Whether the adoption agency's action is controlled by state law or regulation is significant. In [Swayne v. L.D.S. Soc. Servs.](#), 670 F. Supp. 1537, 1541-42 (D. Utah 1987), and [Swayne v. L.D.S. Soc. Servs.](#), 795 P.2d 637, 640 (Utah 1990), the courts held an adoption agency was engaged in state action when it terminated a father's parental rights by filing an adoption petition. Significant in those decisions is that "the statute involved is self-operative and mandates the resultant termination of an illegitimate father's parental rights." 670 F. Supp. at 1541. Thus, the state, not a private party, had made an official policy decision by enactment of the law. [Id.](#) "The only fair conclusion is that such a private party becomes a 'state actor' when his or her actions bring the statute into play so as to effectuate the pre-determined state decision to terminate parental rights." [Id.](#) at 1542. See also 795 P.2d at 640 (stating the private party becomes a state actor by effectuating the state's termination of the father's rights).

Cases holding licensed medical facilities are not state actors illustrate the significance of whether state laws or regulations dictate the action of the child-placement agency. In [Watkins v. Mercy Med. Ctr.](#), 364 F. Supp. 799 (D. Idaho 1973), [aff'd](#), 520 F.2d 894 (9th Cir. 1975), the court held that a hospital was not a state actor when it refused to renew the plaintiff's privileges because he would not abide by the ethical and religious directives of the facility. The hospital was licensed by the state and received state and federal funds under Medicare and Medicaid programs. Despite this, the court held the hospital was not acting under color of state law:

The state has exacted no conditions upon the hospital concerning sterilization or abortion in order to receive tax benefits or state or federal money. The state regulations which the hospital must conform to in no way relate to its policy concerning sterilization or abortions. Since hospital policy is not and has not been affected by the benefits bestowed upon it by the state, defendants were not acting under color of state law when the policy was formulated or enforced.

[Id.](#) at 802.

The court concluded that the hospital "has the right to adhere to its own religious beliefs and not be forced to make its facilities available for services which it finds repugnant to those beliefs." [Id.](#) at 803. The court further explained that the doctor cannot force the hospital to allow him to perform the prohibited services in the hospital. "To hold otherwise would violate the religious rights of the hospital." [Id.](#)

Similarly, the court in [Greco v. Orange Memorial Hosp. Corp.](#), 374 F. Supp. 227 (E.D. Tex. 1974), [aff'd](#), 513 F.2d 873 (5th Cir.), [cert. denied](#), 423 U.S. 1000 (1975), found a private hospital not to be acting under color of state law because the actions in question were not regulated or supported by the state. The court explained that "there must be governmental involvement in the very activity that is being challenged. If the State is completely neutral and does not foster or encourage the hospital policy causing the plaintiff's injury, then there is no state action." [Id.](#) at 233. Because the government did not seek to regulate or influence the medical policy to be followed within the hospital, but remained "completely neutral," the hospital was not acting under color of state law when it established this policy prohibiting performance of elective abortions. [Id.](#)

*7 A child-placing agency's decision not to perform or participate in a particular placement would be a decision made by the agency and not the state. Under SB 2188 the state would remain completely neutral regarding that decision. Accordingly, a child-placing agency would not be a state actor when deciding whether to perform or participate in a placement.

RELIGIOUS VERSUS MORAL CONVICTIONS OR POLICIES

Honorable Merle Boucher, 2003 N.D. Op. Atty. Gen. L-18 (2003)

Senate Bill No. 2188 applies to “moral” convictions or policies as well as “religious” convictions or policies.³ According to The American Heritage Dictionary (2d coll. ed. 1991), “moral” means “concerned with the judgment principles of right and wrong in relation to human action and character.” Id. at 813. Although moral convictions may be, and often are, based upon religious beliefs and convictions, the two are not necessarily synonymous. Moral convictions may be based upon individual beliefs and purely secular considerations.⁴

The United States Supreme Court has distinguished between philosophical and personal beliefs based on purely secular considerations and religious beliefs. “[T]o have the protection of the Religion Clauses, the claims must be rooted in religious belief.” Wisconsin v. Yoder, 406 U.S. 205, 215 (1972). See also Stevens v. Berger, 428 F. Supp. 896, 899 (E.D.N.Y. 1977) (stating that for a belief to be protected by the Constitution the belief must be “based upon what can be characterized as theological, rather than secular e.g., purely social, political, or moral views”); Syska v. Montgomery County Bd. of Educ., 415 A.2d 301, 304 (Md. Ct. Spec. App. 1980) (stating that beliefs based on purely secular considerations, rather than religious, are not protected under the Religion Clauses).

I am aware of no case law that would prohibit the Legislature from exempting child-placing agencies from statutory requirements based upon the child-placing agency’s secular moral convictions or policies. To the contrary, some courts have held that a statutory exception based upon religious belief must apply equally to sincerely held moral beliefs. See, e.g., Welsh v. United States, 398 U.S. 333, 357-58 (1970) (Harlan, J., concurring) (stating that exemptions cannot draw a line between religious and secular beliefs); Goguen v. Clifford, 304 F. Supp. 958 (D.N.J. 1969) (same); Koster v. Sharp, 303 F. Supp. 837, 845 (E.D. Pa. 1969) (same).

RELIGIOUS BELIEFS ARE NOT PART OF THE LICENSURE PROCESS

Your March 5, 2003, letter states that SB 2188 requires the Department of Human Services “to ascertain the child placement agency’s religious or moral convictions or policies as part of the licensing process for placement for adoption or foster care children.” I do not read SB 2188 to require such a determination. Chapter 50-12, N.D.C.C., does not require that an applicant for licensure agree to perform, assist, counsel, recommend, facilitate, refer, or participate in any particular type of placement or activities associated with placement. In other words, it does not appear that the Department of Human Services, under N.D.C.C. 50-12, could deny an applicant a license for electing not to participate in any aspect of a placement. As part of the licensure process, there is no legal basis for the Department of Human Services to consider a child-placement agency’s beliefs regarding participating in particular placement activities.

FAIRNESS TO POTENTIAL ADOPTIVE PARENTS

*8 Your letter also points out that a potential foster parent or adoptive parent “is entitled to fair and equal consideration regardless of religion, race, ethnic origin, gender, sexual preference or physical appearance.” Senate Bill No. 2188 does not prohibit “fair and equal consideration” of potential foster and adoptive parents. It specifically provides that a decision by a child-placing agency not to assist in a placement because of religious or moral convictions or policies “does not constitute a determination that the proposed adoption is not in the best interest of the minor.” In other words, in accommodating the child-placing agency’s religious or moral convictions or policies, SB 2188 does not impair a potential foster or adoptive parent’s opportunity to seek services from another child-placement agency.

CONCLUSION

The United States Supreme Court has acknowledged that it “has struggled to find a neutral course between the two Religion Clauses, both of which are cast in absolute terms, and either of which, if expanded to a logical extreme, would tend to clash with the other.” Walz v. Tax Comm’n of N.Y., 397 U.S. 664, 668-69 (1970). The Court has further explained:

The general principle deducible from the First Amendment and all that has been said by the Court is this: that we will not tolerate either governmentally established religion or

Honorable Merle Boucher, 2003 N.D. Op. Atty. Gen. L-18 (2003)

governmental interference with religion. Short of those expressly proscribed governmental acts there is room for play in the joints productive of a benevolent neutrality which will permit religious exercise to exist without sponsorship and without interference.

Id. at 669.

Based upon Amos and the other cases cited in this opinion, it is my opinion that SB 2188 is a constitutionally permissible accommodation of the religious and moral beliefs of child-placement agencies.

Sincerely,

Wayne Stenehjem
Attorney General

Footnotes

- ¹ There are currently six licensed child-placing agencies. Three of those agencies are affiliated with religious denominations. One of the remaining three is religiously based, although not affiliated with a particular denomination. Thus, there are currently two licensed child-placing agencies that are not religiously based or affiliated. One child-placing agency that is not religiously based is currently seeking licensure.
- ² The Lemon test was first adopted by the United States Supreme Court in Lemon v. Kurtzman, 403 U.S. 602 (1971). Although the Supreme Court has applied and adapted the test to various circumstances, the test has not been overruled. A law that satisfies the Lemon test should satisfy the analysis currently used by the Supreme Court. See N.D.A.G. 2002-F-05.
- ³ The words “convictions” and “policies” recognize the difference between individuals and organizations. Individuals may have religious or moral convictions, while organizations may adopt policies addressing religious or moral positions.
- ⁴ The distinction between “religious” and “moral” beliefs is difficult to define. “[T]he distinction between personal and religious beliefs is inherently difficult because ‘in no field of human endeavor has the tool of language proved so inadequate.’” Strayhorn v. Ethical Soc’y of Austin, No. 03-02-00066-CV, 2003 WL 740277 at 6 (Tex. Ct. App. Mar. 6, 2003) (quoting United States v. Seeger, 380 U.S. 163, 175 (1965)). See also Malnak v. Yogi, 592 F.2d 197, 210 (3rd Cir. 1979) (“Defining religion is a sensitive and important legal duty. Flexibility and careful consideration of each belief system are needed.”); Church of the Chosen People v. United States, 548 F. Supp. 1247, 1252 (D. Minn. 1982) (“The definitions of the words ‘religion’ and ‘religious’ are by no means free of ambiguity. The United States Supreme Court has not established a clear standard for determining which beliefs are religious.”). In Welsh v. United States, 398 U.S. 333 (1970), the Court read “religious belief” to include “deeply and sincerely” held “beliefs that are purely ethical or moral in source and content.” Id. at 340.

2003 N.D. Op. Atty. Gen. L-18 (N.D.A.G.), 2003 WL 1829244

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