

70CDCR19DIG000008
INTER-GOVERNMENTAL SERVICE AGREEMENT
BETWEEN THE
UNITED STATES DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
OFFICE OF ENFORCEMENT AND REMOVAL OPERATIONS
AND
SAN LUIS FACILITY DEVELOPMENT CORPORATION

This Inter-Governmental Service Agreement (“Agreement”) is entered into between United States Department of Homeland Security Immigration and Customs Enforcement (“ICE”), and the San Luis Facility Development Corporation, (“Service Provider”) for the detention and care of **detainees**. The term “Parties” is used in this Agreement to refer jointly to ICE and the Service Provider.

FACILITY LOCATION:

The Service Provider shall provide detention services for detainees at the following institution(s):

San Luis Regional Detention Center
406 North Avenue D
San Luis, AZ 85349
(Sometimes referred to as “Facility”).

The following documents constitute the complete Agreement and are hereby incorporated directly or by reference:

- Inter-Governmental Service Agreement (IGSA) 70CDCR19DIG000008
- ICE National Detention Standards (NDS) 2000 <https://www.ice.gov/detention-standards/2000>
- Attachment 1 – SOW dated April 25, 2019
- Attachment 2 - Wage Determination Number: 2015-5475, Revision 5, dated 1/10/2018
- Attachment 3 - Title 29, Part 4 Labor Standards for Federal Service Contracts
- Attachment 4 - Quality Assurance Surveillance Plan (QASP)/PRS/CDR
- Attachment 5 - PREA Regulations
- Attachment 6 – G-391 Data Collection Categories and Descriptions
- Attachment 6(a) – G-391 Transportation Data Template
- Attachment 7 - Hold Harmless and Indemnity Agreement
- Attachment 8 – Franco-Gonzalez Implementation Order Confirmation and Form
- Attachment 8(a) – Franco-Gonzalez Implementation Order Order CV-10-02211 DMG (DTBx) (U.S. Central District Court for California Oct. 29, 2014)
- Attachment 9 – Subcontract – San Luis Facility Development Corporation’s subcontract for Facility Operation and Management Agreement, and Amendment and Adopting Resolutions.

IN WITNESS WHEREOF, the undersigned, duly authorized officers, have subscribed their names on behalf of the San Luis Facility Development Corporation and Department of Homeland Security, U.S. Immigration and Customs Enforcement.

ACCEPTED:

U.S. Immigration and Customs Enforcement
Office of Acquisition Management
24000 Avila Rd, Suite 3104
Laguna Niguel, California 92677

ACCEPTED:

San Luis Facility Development Corp.
1090 E Union St.
San Luis, Arizona 85349

Signature: _____

Date: _____

Signature: _____

Jenny Torres, President

Date: _____

ATTEST:

Signature: _____

Maria Gonzalez, Secretary

APPROVED AS TO FORM:

Signature: _____

Kay Marion Macuil
General Counsel

Inter-Governmental Service Agreement (IGSA)

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Article 1. Purpose

- A. Purpose: The purpose of this Inter-Governmental Service Agreement (IGSA or “the Agreement”) is to establish a contractual arrangement between ICE and the Service Provider for the provision of the necessary physical structure, equipment, facilities, personnel, and services to provide a program of care in a properly staffed and secure environment under the authority of the Immigration and Nationality Act, as amended. All persons in the custody of ICE are “Administrative Detainees.” This term recognizes that ICE detainees are not charged with criminal violations and are only held in custody to assure their presence throughout the administrative hearing process and to assure their presence for removal from the United States pursuant to a lawful final order by the Immigration Court, the Board of Immigration Appeals or other Federal judicial body.

- B. Responsibilities: This Agreement sets forth the responsibilities of ICE and the Service Provider. The Service Provider shall provide all personnel, management, equipment, supplies, and services necessary for performance of all aspects of the Agreement and ensure that the safekeeping, housing, subsistence, medical, and other program services provided to ICE detainees housed in the Facility is consistent with ICE’s civil detention authority, the SOW, IGSA requirements and ICE standards referenced in this Agreement. The Agreement states the services the Service Provider shall perform satisfactorily to receive payment from ICE at the rate prescribed in Article I C.

- C. Rates: This is a fixed rate contract, not a cost reimbursable, with respect to the bed day rate for **360 adult male and female detainees**. ICE will be responsible for reviewing and approving the costs associated with this Agreement and subsequent modifications utilizing all applicable federal procurement laws, regulations and standards in arriving at the bed day rate.

Bed Day Rate	\$ 92.48 per detainee
Guard/Transportation Svc	\$ 33.30 per hour
Mileage	In accordance with GSA FTR

Guarantee Minimum: 250 beds (“Bed Guarantee”)

If this IGSA contains a population guarantee, ICE will not be liable for any failure to meet the population guarantee if such failure directly results from an occurrence that impairs the ability to use the Facility's capacity, and such occurrence arises out of causes beyond the control and without the fault or negligence of ICE. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, freight embargoes, court orders and severe or adverse weather. This provision shall become effective only if ICE immediately notifies the Service Provider of the extent and nature of the occurrence resulting in the failure and takes all reasonable steps to limit any adverse effects required by the occurrence.

Article 2. General

- A. Commencement of Services: ICE is under no obligation to utilize the facilities identified herein until the need for detention services has been identified, funding has been identified and made available, and the Facility meets ICE requirements, and is compliant with ICE National Detention Standards (NDS) 2000. Therefore, ICE may perform numerous assessments to ensure compliance prior to presenting detainees for housing, but once detainees are presented for housing the Bed Guarantee is triggered.
**Should there be a need for a ramp-up plan, the effective start of the plan is from the date of the first detainee presented for housing.*
- B. Funding: The obligation of ICE to make payments to the Service Provider is contingent upon the availability of Federal funds. ICE will neither present detainees to the Service Provider nor direct performance of any other services until ICE has the appropriate funding. Orders will be placed under this Agreement when specific requirements have been identified and funding obligated. Performance under this Agreement is not authorized until the Contracting Officer (sometimes referred to as CO) issues an order in writing. The effective date of the services will be negotiated and specified in this Agreement. The Service Provider shall be prepared to accept detainees immediately upon issuance of task order in accordance with the agreed upon ramp-up plan.
- C. Subcontractors: The Service Provider shall notify and obtain approval from the ICE Contracting Officer if it intends to house ICE detainees in a facility other than San Luis Regional Detention and Support Center. If either the Facility or any future facility is operated by an entity other than the Service Provider, ICE will treat the entity as a subcontractor to the Service Provider. The Service Provider shall obtain the Contracting Officer's approval before subcontracting the detention and care of detainees to another entity. The Contracting Officer has the right to deny, withhold, or withdraw approval of the proposed subcontractor. Upon approval by the Contracting Officer, the Service Provider shall ensure that any subcontract includes all provisions of this Agreement, and shall provide ICE with copies of all subcontracts. All payments will be made to the Service Provider. ICE will not accept invoices from, or make payments to, a subcontractor. Subcontractors that perform under this Agreement are subject to the terms and conditions of this IGSA.
- D. Staffing: The Service Provider shall have a staffing plan to effectively staff the Facility in a safe and secure manner.
- E. Consistent with Law: This is a firm fixed rate Agreement, not a cost reimbursable Agreement. This Agreement is permitted under applicable statutes, regulations, policies and judicial mandates. Any provision of this Agreement contrary to applicable statutes, regulation, policies or judicial mandates is null and void and shall not necessarily affect the balance of the Agreement.
- F. Arizona Law; This Agreement is subject to the provisions of A.R.S. §38-511.

Article 3. Covered Services

- A. Bed space: The Service Provider shall provide and operate, a 360-bed adult male/female civil detention facility, with 250-bed guaranteed minimum. The facility shall be located within appropriate proximity and access to emergency services (medical, fire protection, law enforcement, etc.). ICE will be financially liable only for the actual detainee days as defined in Paragraph C of Article 3.
- B. Basic Needs: The Service Provider shall provide ICE detainees with safekeeping, housing, subsistence, medical and other services in accordance with this Agreement. In providing these services, the Service Provider shall ensure compliance with all applicable laws, regulations, fire and safety codes, policies and procedures. The types and levels of services shall be consistent with those the Service Provider routinely affords other inmates. If the Service Provider determines that ICE has delivered a person for custody who is under the age of eighteen (18), the Service Provider shall not house that person with adult detainees and shall immediately notify the ICE Contracting Officer's Representative ("COR") or designated ICE official. ICE will remove the juvenile within seventy-two (72) hours. **ICE shall pay Bed Day for such juveniles if they remain after midnight of the arrival day.**
- C. Unit of Service and Financial Liability: The unit of service is called a "Bed Day" and is defined as one person per day. The bed day begins on the date of arrival. The Service Provider may bill ICE for the date of arrival but not the date of departure. The Service Provider shall not charge for costs that are not directly related to the housing and detention of detainees. Such unallowable costs include but are not limited to:
- 1) Salaries of elected officials
 - 2) Salaries of employees not directly engaged in the housing and detention of detainees
 - 3) Indirect costs in which a percentage of all local government costs are pro-rated and applied to individual departments unless those costs are allocated under an approved Cost Allocation Plan
 - 4) Detainee services which are not provided to, or cannot be used by, Federal detainees
 - 5) Operating costs of facilities not utilized by Federal detainees
 - 6) Interest on borrowing (however represented), bond discounts, costs of financing/refinancing, except as prescribed by the Office of Management and Budget, OMB Circular A-87.
 - 7) Legal or professional fees (specifically legal expenses for prosecution of claims against the Federal Government, legal expenses of individual detainees or inmates)
 - 8) Contingencies.

- D. Language Access Services: The Service Provider shall provide language access services, which include interpretation and translation services, for limited English proficient (LEP) detainees. This should be accomplished through professional interpretation and translation or qualified bilingual personnel for necessary communication with detainees who do not read, speak, write, or understand English. Oral interpretation should be provided for detainees who are illiterate. Other than in emergencies, and even then, only for that period of time before appropriate language services can be procured, detainees shall not be used for interpretation or translation services. The Service Provider shall also make special provisions for detainees who are illiterate. The Service Provider should utilize commercial phone language interpretive services to ensure fulfillment of this requirement. Upon request, ICE will assist the Service Provider in obtaining interpretation and translation services through a toll-free line. The Service Provider shall provide all instructions verbally, either in English or the detainees' language, as appropriate, to detainees who cannot read.
- E. Disability-Related Services: The Service Provider shall comply with Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), their implementing federal regulations, any other applicable disability-related federal law and state law, and its obligations under NDS 2000. Specifically, the Service Provider shall ensure that its building and transportation services are physically accessible for detainees with disabilities. Also, as required under applicable federal and state law and under NDS 2000, the Service Provider shall provide detainees with disabilities with accommodations, auxiliary aids, and modifications to policies, practices, and/or procedures to allow them an equal opportunity to access, participate in, or benefit from detention programs, services, and activities. The Service Provider shall allow for effective communication with detainees with disabilities through the provision of accommodations and auxiliary aids, such as access to sign language interpretation services, as necessary. In addition, deaf detainees shall have access to a TTY telephone and to sign language interpretation services.
- F. Escort and Transportation Services: The Service Provider shall provide, upon request and as scheduled by ICE, necessary escort and transportation services for ICE detainees to and from designated locations. Escort services shall be required for escorting detainees to court hearings; escorting detainees who are witnesses to the courtroom and staged with the Immigration Judge during administrative proceedings. Transportation Services shall be performed by at least two (2) qualified sworn law enforcement or correctional officers employed by the Service Provider under their policies, procedures and authorities.
- G. No ICE Liability for Failure to Meet Minimum Guarantee: ICE will not be liable for any failure to meet the minimum or population guarantee if such failure results directly from an occurrence that impairs the ability of ICE to use the Facility's capacity, and such occurrence arises out of causes beyond the control and without the fault or negligence of ICE. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, freight embargoes, court orders and extraordinarily severe weather. This provision becomes effective only if ICE immediately notifies the Service Provider of the

extent and nature of the occurrence resulting in the failure and takes all reasonable steps to limit any adverse effects required by the occurrence.

Article 4. Receiving and Discharging Detainees

- A. Required Activity: The Service Provider shall receive and discharge detainees only to and from properly identified ICE Enforcement and Removal Operations (ERO) personnel or other properly identified Federal law enforcement officials with prior authorization from ICE/ERO. Presentation of U.S. Government identification will constitute “proper identification.” The Service Provider shall furnish receiving and discharging services twenty-four (24) hours per day, seven (7) days per week. ICE will furnish the Service Provider with reasonable notice of receiving and discharging detainees. The Service Provider shall ensure positive identification and recording of detainees and ICE officers. The Service Provider shall not permit medical or emergency discharges except through coordination with on-duty ICE officers.
- B. Emergency Situations: ICE detainees shall not be released from the Facility into the custody of other Federal, state, or local officials for any reason, except for medical or emergency situations, without express authorization of ICE.
- C. Restricted Release of Detainees: The Service Provider shall not release ICE detainees from its physical custody to any persons other than those described in Paragraph A of Article 4 for any reason, except for either medical, other emergency situations, or in response to a federal writ of habeas corpus. If an ICE detainee is sought for federal, state, or local proceedings, only ICE may authorize release of the detainee for such purposes. The Service Provider shall contact the ICE COR or designated ICE official immediately regarding any such requests.
- D. Safe Release: All detainee releases shall be released from the local ICE office in Minneapolis or other designated location as determined by the COR or other Federal Government official.
- E. Service Provider Right of Refusal. The Service Provider retains the right to refuse acceptance of any detainee if such refusal is supported by a valid justification and agreed to by the COR. Examples of such justification are: any detainee exhibiting violent or disruptive behavior, or any detainee found to have a medical condition that requires medical care beyond the scope of the Service Provider’s health care provider. In the case of a detainee already in custody, the Service Provider shall notify ICE and request such removal of the detainee from the Facility. The Service Provider shall allow ICE reasonable time to make alternative arrangements for the detainee.
- F. Emergency Evacuation: In the event of an emergency requiring evacuation of the Facility, the Service Provider shall evacuate ICE detainees in the same manner, and with the same safeguards, as it employs for persons detained under the Service Provider’s

authority. The Service Provider shall notify the ICE COR or designated ICE official within two (2) hours of evacuation.

Article 5. ICE Performance-Based National Detention Standards and Other Applicable Standards

- A. The Service Provider shall house detainees and perform related detention services at a minimum in accordance with the NDS 2000 (<https://www.ice.gov/detention-standards/2000>) unless otherwise specified in this Agreement. ICE Inspectors will conduct periodic inspections of the Facility to assure compliance with the NDS 2000. Due to Facility limitations and geographic location, the outdoor recreation provisions of the NDS 2000 standards do not apply at this Facility.
- B. If a change in the standards identified herein results in a documentable financial impact to the Service Provider, the Service Provider must notify the Contracting Officer within five (5) days of receipt of the change and request either 1) a waiver to the Standards or, 2) to negotiate a change in per diem.
- C. The Service provider shall also comply with the American Correctional Association (ACA) Standards for Adult Local Detention Facilities (ALDF), and Standards Supplement, Standards for Health Services in Jails. Some ACA standards are augmented by ICE Policy and/or procedure. Finally, the Service Provider will comply with all required elements of Subpart A of the U.S. Department of Homeland Security Regulation titled "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," title 6 Code of Federal Regulation (C.F.R.) part 115 Department of Homeland Security Prison Rape Elimination Act (DHS PREA). If any requirements of the DHS PREA standards conflict with the terms of the NDS 2000, the DHS PREA standards shall prevail.
- D. In cases where other standards conflict with ICE Policy or Standards, NDS 2000 Standards will prevail.

Article 6. Medical Services

- A. If it is determined that ICE Health Service Corps will not provide direct patient care services at this location, the Service Provider shall be responsible for providing health care services for ICE detainees at the Facility in accordance with NDS 2000 and/or the ICE Family Residential Standards, including but not limited to; intake arrival screening, infectious disease screening and treatment, emergent, acute and chronic care, on-site sick call, dental services, and mental health services. Also required is over-the-counter and prescription medications per the current ICE Health Service Corps (IHSC) Formulary along with all required vaccinations per the Centers for Disease Control (CDC) recommendations and IHSC policy for certain populations. On-site routine labs and Clinical Laboratory Improvement Amendments CLIA waived testing (see attached

appendix) will be a requirement of the Service Provider. Off-site labs must be approved through the MedPAR system and will be paid for by IHSC. Medical supplies will also be provided at no additional cost to the government or the ICE detained alien. All of the above costs will be included in the bed day rate for this contract.

The exception would be any approved prescription medications that must be filled at a retail pharmacy location, to include; approved non-formulary meds, or any approved newly marketed med not currently available at the on-site pharmacy, as well as durable medical equipment identified as necessary by a medical provider. The mechanism for payment for retail purchases of medications and durable medical equipment will be made available through the IHSC Field Medical Coordinator (FMC). The circumstances described in this paragraph are allowable contingencies. The unallowable costs under Article 3 (C) 8 do not apply to this paragraph.

- B. In the event of a medical emergency, the Service Provider shall proceed immediately to provide necessary emergency medical treatment, including initial on-site stabilization and off-site transport, if needed. The Service Provider shall notify ICE immediately regarding the nature of the transferred detainee's illness or injury and the type of treatment provided. The cost of all emergency medical services provided off-site will be the responsibility of ICE Health Service Corps (IHSC). At no time shall the Service Provider or detainee incur any financial liability related to such services. The primary point of contact for obtaining pre-approval for non-emergent care as well as the post-approval for emergent care will be the IHSC FMC assigned to this location.
- C. The Service Provider shall furnish a twenty-four (24) hour/seven day per week emergency medical care contact list, which must include local hospitals and other offsite service providers. The Service Provider shall ensure they have access to an offsite emergency medical provider at all times.
- D. The Service Provider must make available a facility emergency evacuation procedure guide that includes any patients currently housed in a medical/mental health housing area including any isolation rooms as well as other special housing areas within the facility. The Service Provider must provide training on all emergency plans to the onsite medical staff.
- E. A true copy of a detainee's medical records shall be transferred with the detainee upon request of the detainee. Otherwise, a medical transfer summary shall accompany the detainee outlining necessary care during transit that includes current medications, medical precautions, tuberculosis testing and evaluation status, equipment needed, and appropriately authorized methods of travel.
- F. Except for health care provided by the Ice Health Service Corps, the Service Provider shall ensure that all health care providers utilized for ICE detainees hold current licenses, certifications, and/or registrations within the State and/or City where they treat our detained population. The Service Provider shall retain, at a minimum, staffing levels as approved by IHSC at the time of implementation of this contract.

- G. The Service Provider shall furnish onsite health care under this Agreement as defined by the Facility Local Health Authority (usually the Health Administrator) and as approved by the ICE Health Authority on the effective date of this Agreement. The Service Provider shall not charge any ICE detainee a fee or co-payment for medical services or treatment provided at the Facility. The Service Provider shall ensure that ICE detainees receive no lower level of onsite medical care and services than those it provides to local inmates, and as spelled out in NDS 2000.
- H. Onsite health care personnel shall perform **initial medical screening** within (12) hours of arrival to the Facility. Arrival screening shall include, at a minimum, all questions captured on the IHSC 795-A or equivalent. Required testing for TB infection and/or disease using any Food and Drug Administration (FDA) approved method, and recording the history of past and present illnesses (mental and physical, dental, pregnancy status, history of substance abuse, screening questions for other infectious disease, and current health status). Initial screening will also contain height, weight, and a complete set of vital signs (Blood Pressure, Pulse, and Temperature). Blood sugar and Oxygen (O₂) readings may be necessary dependent upon specified diagnosis or current medical concern.
- I. The Service Provider shall furnish mental health evaluations as determined by the Facility local health authority and in accordance with detention, NDS 2000, National Commission on Correctional Health Care (NCCHC), and ACA standards with the expectation to provide custody oversight and medication as needed.
- J. **A full health assessment to include a history and hands-on physical examination shall be completed within the first 14 days of detainee arrival unless the clinical situation dictates an earlier evaluation.** Detainees with chronic medical and/or mental health conditions shall receive prescribed treatment and follow-up care with the appropriate level of provider and in accordance with the NDS 2000, the Family Residential Standards, National Commission on Correctional Health Care (NCCHC) and American Correctional Association Standards based on which standards are applicable under this Agreement. In addition, **any juvenile (pediatric or adolescent) seen for a scheduled medical, dental or mental health appointment will have a weight, blood pressure, temperature, and pulse taken and recorded in the record.** This does not include the weekly mental health wellness check conducted for each juvenile.
- K. If the Service Provider determines that an ICE detainee has a medical condition which renders that person unacceptable for detention under this Agreement, (for example, serious contagious disease, condition needing life support, uncontrollable violence, or serious mental health condition), the Service Provider shall notify ICE through the Field Office representative. Upon such notification, the Service Provider shall allow ICE reasonable time to make the proper arrangements for further disposition of that detainee.
- L. The Service Provider shall release any and all medical information for ICE detainees to the IHSC representatives upon request.

The Service Provider shall submit a Medical Payment Authorization Request (MedPAR) to IHSC for payment for off-site medical care (e.g., offsite lab testing, eyeglasses, prosthetics, hospitalizations, emergency visits). The Service Provider shall enter payment authorization requests electronically as outlined in the MedPAR User Guide: <https://medpar.ehr-icehealth.org/>. The circumstances described in this paragraph are allowable contingencies. The unallowable costs under Article 3 (C) 8 do not apply to this paragraph.

- M. The Health Authority of the Service Provider shall notify the ICE contact and/or FMC as soon as possible if emergency care was obtained off-site; and in no case, more than seventy-two (72) hours after detainee is in receipt of such care. Authorized payment for all off-site medical services for the initial emergency needs and for medical and/or mental health care required beyond the initial emergency situation will be made by the Veterans Administration Franchise Service Center (VA FSC) on behalf of IHSC directly to the medical provider(s).

IHSC VA Financial Services Center
PO Box 149345
Austin, TX 78714-9345
Phone: (800) 479-0523
Fax: (512) 460-5538

- N. The Service Provider shall allow IHSC Field Medical Coordinators, Managed Care Coordinators or any ICE personnel reasonable access to its Facility and medical records of ICE detainees for the purpose of liaison activities with the local IGSA Health Authority and associated Service Provider departments in accordance with Health Insurance Portability and Accountability Act (HIPAA) privacy exception at 45 C.F.R. § 164.512 (k)(5)(i).
- O. The Service Provider shall provide ICE detainee medical records to ICE whether created by the Service Provider or its sub-Service Provider/vendor upon request from the Contracting Officer's Representative or Contracting Officer in accordance with HIPAA privacy exception at 45 C.F.R. § 164.512 (k)(5)(i), which allows disclosure without consent to a correctional institution or a law enforcement official having lawful custody of an inmate or other individual if the correctional institution or such law enforcement official represents that such protected health information is necessary for:
- a. The provision of health care to such individuals;
 - b. The health and safety of such individual or other inmates;
 - c. The health and safety of the officers or employees of or others at the correctional institution;

- d. The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another;
- e. Law enforcement on the premises of the correctional institution;
- f. The administration and maintenance of the safety, security, and good order of the correctional institution; and
- g. Conducting a quality improvement / quality of care review consistent with an established quality improvement (medical quality management) program and interfacing with the IHSC quality improvement program consistent with federal, state, and local laws.

P. Tuberculosis Screening

The Service Provider will perform Tuberculosis (TB) screening as part of the routine intake screening, within 12 hours of detainee admission, early detection of any detainee suspected of having TB disease. TB screening will include, at a minimum, TB symptom screening and testing for TB infection and/or disease using any Food and Drug Administration (FDA) approved method. Detainees who have symptoms suggestive of TB disease will be immediately placed in an airborne infection isolation room and promptly evaluated for suspected TB disease. Detainees who are initially tested using a test for TB infection [TB skin test (TST) or interferon gamma release assay (IGRA)] and result with a TST interpretation or IGRA positive for TB infection and no symptoms suggestive of TB disease must be evaluated with a chest radiograph within 5 days after the TST is interpreted or IGRA result is received.

Detainees who are identified with confirmed or suspected active TB (e.g., symptoms suggestive of TB or chest radiograph suggestive of TB) will be placed in a functional airborne infection isolation room and managed in accordance with the Performance-Based National Detention Standards (PBNDS) and all applicable CDC guidelines: <http://www.cdc.gov/tb/publications/guidelines/default.htm>.

It is not necessary to house detainees separately from the general population unless there is clinical or radiographic evidence suggestive of TB disease. If chest x-rays are performed on-site, they will be performed by a trained and qualified health care provider and interpreted by a credentialed radiologist. There will be a non-punitive process in place for detainees who refuse the screening assessment for TB.

The Service Provider will notify IHSC and the local health department of all detainees with confirmed or suspected TB disease, including detainees with clinical or radiographic evidence suggestive of TB. Notification shall occur within one working day of identifying a detainee with confirmed or suspected TB disease. Notification to local health departments shall identify the detainee as being in ICE custody and shall include the alien number with other identifying information. For detainees with confirmed or suspected TB disease, the Service Provider will coordinate with IHSC and the local health department prior to release to facilitate release planning and referrals for continuity of care.

The Service Provider will evaluate detainees annually for symptoms, consistent with TB, within one year of the previously documented TB evaluation. For detainees initially screened with a TST or IGRA with a negative result, annual evaluation will include testing with the same method as previously used. For detainees initially evaluated with a chest radiograph interpreted as not suggestive of TB disease, routine annual chest radiograph is not recommended.

Q. Radiology Service Provider

If the Service Provider utilizes teleradiology for Tuberculosis screening, the requirement should be built into the established bed day rate for this IGSA.

R. Airborne precautions

In order to prevent the spread of airborne infectious disease or cross-contamination of zones within the Facility,

- (1) the HVAC system in the intake screening area will be designed to be dedicated to the intake area and not linked to other areas of the Facility , and
- (2) the HVAC system in eight (8) medical cells will be designed to exhaust to the exterior and prevent air exchange between the eight (8) medical cells and any other area within the Facility (see CDC guidelines <http://www.cdc.gov/tb/publications/guidelines/Correctional.htm>).

Other areas of concern:

Language Access Services: The Service Provider shall provide language access services, which include interpretation and translation services, for limited English proficient (LEP) detainees. This should be accomplished through professional interpretation and translation or qualified bilingual personnel for necessary communication with detainees who do not read, speak, write, or understand English. Oral interpretation should be provided for residents who are illiterate. Other than in emergencies, and even then, only for that period of time before appropriate language services can be procured, residents shall not be used for interpretation or translation services. The Service Provider shall also make special provisions for detainees who are illiterate. The Service Provider should utilize commercial phone language interpretive services to ensure fulfillment of this requirement. Upon request, ICE will assist the Service Provider in obtaining interpretation and translation services through a toll-free line. The Service Provider shall provide all instructions verbally, either in English or the detainees' language, as appropriate, to detainees who cannot read.

Disability-Related Services: The Service Provider shall comply with Section 504 of the Rehabilitation Act of 1973 (Section 504), Title II of the Americans with Disabilities Act of 1990 (Title II), their implementing federal regulations, any other applicable disability-related federal law and state law, and its obligations under NDS 2000. Specifically, the Service Provider shall ensure that its building and transportation services are physically accessible for detainees with disabilities. Also, as required under applicable federal and state law and under NDS 2000, the Service Provider shall provide detainees with

disabilities with accommodations, auxiliary aids, and modifications to policies, practices, and/or procedures to allow them an equal opportunity to access, participate in, or benefit from detention programs, services, and activities. The Service Provider shall allow for effective communication with detainees with disabilities through the provision of accommodations and auxiliary aids, such as access to sign language interpretation services, as necessary. In addition, deaf detainees shall have access to a TTY telephone and to sign language interpretation services.

Employee Health: Employee health files for each employee must be maintained on-site, in a locked cabinet by the Health Services Administrator or the employer's designee. Health files are maintained in accordance with DHS and ICE Privacy Policies and the Privacy Act of 1974 and contain the following documents:

- a. Initial and annual TB infection screening results.
- b. Vaccination records, including results, titers, and Immunization Declination Form(s).
- c. OSHA 301 Incident forms.
- d. Bloodborne pathogen exposure documentation.
- e. Annual respirator medical clearance.
- f. Fit test results.
- g. Other employee health documents.

The Service Provider may initiate employment of an individual who has initiated the required vaccines and the individual may be hired and begin performing work on the Agreement as long as they meet all subsequent booster dates until fully vaccinated.

All Agreement personnel must provide documentation regarding the following:

1. History of testing for tuberculosis (TB) within the last 12 months:
 - a. Chest x-ray if employee has a history of Latent Tuberculosis Infection (LTBI), treatment history for LTBI or TB disease, if applicable; and
 - b. Additionally, on an annual basis and at own expense, contractor shall provide a current TST or IGRA test result if the employee previously tested negative for LTBI, evaluation for TB symptoms if the employee previously tested positive for LTBI, and follow up as appropriate in accordance with Centers for Disease Control and Prevention (CDC) guidelines.
2. Hepatitis B

The Occupational Safety and Health Administration (OSHA) Blood-borne Pathogens (BBP) Standard requires employers to provide employees at risk of occupational

exposure to blood and other potentially infectious material (OPIM) with the Hepatitis B vaccination series. Health staff must do one of the following:

- a. Complete the Hepatitis B vaccination series, and provide documentation of the vaccination series or titer results that confirm immunity to HBV; or
- b. Refuse the vaccination series for medical reasons and complete the Immunization Declination Form.

Highly recommended vaccinations for custody staff in the detention environment; Custody workers are considered to be at significant risk for acquiring or transmitting Hepatitis B, measles, mumps, rubella, varicella and seasonal influenza. All of these diseases are vaccine-preventable. Therefore, the following vaccinations are highly recommended for custody staff. If staff decline or refuse any of these recommended vaccines, an Immunization Declination Form is required.

- a. Hepatitis A;
- b. Hepatitis B;
- c. Varicella;
- d. Measles, Mumps, Rubella (MMR);
- e. Diphtheria, tetanus, a-cellular pertussis (DTAP); and
- f. Annual seasonal influenza.

Custody staff will provide immunization documentation or titer results to the Health Services Administrator or the employer's designee for placement in the employee health file. CDC's Immunization of Health-Care Workers: Recommendations of the Advisory Committee on Immunization Practices (ACIP) and the Hospital Infection Control Practices Advisory Committee (HICPAC)

Article 7. Employment Screening Requirements (Applicable to County Owned and Operated Facilities)

A. General: Performance under this Inter-Governmental Service Agreement requires access to sensitive DHS information. The Service Provider shall adhere to the following.

B. Employment Eligibility: Screening criteria that may exclude applicants from consideration to perform under this Agreement include:

- Criminal conduct, either as substantiated by convictions or independent evidence
- Misconduct or negligence in employment
- Illegal use of narcotics, drugs, or other controlled substances without evidence of substantial rehabilitation

- Alcohol abuse, without evidence of rehabilitation, of a nature and duration that suggests that the applicant would be prevented from performing the duties of the position in question, or would constitute a direct threat to the property or safety of the applicant or others
- Falsification and/or omission of pertinent information to influence a favorable employment decision
- Dishonest conduct, to include failure to honor just debts
- National security concerns
- Any other legitimate, nondiscriminatory reason that DHS or its components find would adversely affect the efficiency of the service.

Subject to existing law, regulations and/or other provisions of this Agreement, illegal or undocumented aliens shall not be employed by the Service Provider.

The Service Provider shall certify that each employee working on this Agreement has a Social Security Card issued and approved by the Social Security Administration. The Service Provider shall be responsible to the Federal Government for acts and omissions of its own employees and for any Subcontractor(s) and their employees.

C. SUITABILITY DETERMINATIONS

The Service Provider shall perform security vetting in accordance with paragraphs A, B and G of this Agreement, and its own local government policies and procedures.

D. BACKGROUND INVESTIGATIONS

N/A

E. TRANSFERS FROM OTHER DHS CONTRACTS:

N/A

F. CONTINUED ELIGIBILITY

N/A

G. EMPLOYMENT ELIGIBILITY

The Service Provider must agree that each employee working on this Agreement will have a Social Security Card issued and approved by the Social Security Administration. The Service Provider shall be responsible to the Federal Government for acts and omissions of its own employees and for any Subcontractor(s) and their employees.

Subject to existing law, regulations and/ or other provisions of this Agreement, illegal or undocumented aliens will not be employed by the Service Provider, or with this Agreement. The Service Provider will ensure that this provision is expressly

incorporated into any and all Subcontracts or subordinate agreements issued in support of this Agreement.

H. SECURITY MANAGEMENT

N/A

I. INFORMATION TECHNOLOGY SECURITY CLEARANCE

N/A

Article 8. Period of Performance

This Agreement becomes effective upon the date of final signature by the ICE Contracting Officer and the authorized signatory of the Service Provider and will remain in effect for a period not to exceed 60 months unless extended by bi-lateral modification or terminated in writing by either party. Either party must provide written notice of intention to terminate the Agreement, 120 days in advance of the effective date of formal termination, or the Parties may agree to a shorter period under the procedures prescribed in Article 11. If this Agreement is terminated by either party under this Article, ICE will be under no financial obligation for any costs incurred after the date of termination but shall be liable for costs already incurred on or before the date of termination. The Service Provider will only be paid for services provided to ICE up to and including the day of termination.

Article 9. Inspections, Audit, Surveys, and Tours

- A. Facility Inspections: The Service Provider shall allow ICE or an entity or organization approved by ICE to conduct inspections of the Facility, as required, to ensure an acceptable level of services and acceptable conditions of confinement as determined by ICE. No notice to the Service Provider is required prior to an inspection. ICE will share findings of the inspection with the Service Provider's Facility Administrator. The Inspection Report will state any improvements to Facility operation, conditions of confinement, and level of service that will be required by the Service Provider.
- B. ICE will not house detainees in any facility that has received two consecutive overall ratings of less than acceptable. Upon notice that the second overall rating is less than acceptable, ICE will remove all detainees from the Facility within seven (7) calendar days. Any minimum guarantee stated elsewhere in this Agreement is no longer applicable if detainees are removed as a result of two overall ratings less than acceptable. No further funds will be obligated and no further payments will be made, except for payment obligations incurred prior to the date of termination.

- C. Possible Termination: If the Service Provider, after being afforded reasonable time to comply, fails to remedy deficient service identified through an ICE inspection, ICE may terminate this Agreement without regard to any other provisions in this Agreement.
- D. Share Findings: The Service Provider shall provide ICE copies of Facility inspections, reviews, examinations, and surveys performed by accreditation sources. The Service Provider shall cooperate fully with the Detention Service Manager (DSM).
- E. Access to Detainee and Facility Records: The Service Provider shall, upon request, grant ICE access to any record in its possession, regardless of whether the Service Provider created the record, concerning any detainee held pursuant to this Agreement. This right of access includes, but is not limited to, incident reports, records relating to suicide attempts, and behavioral assessments and other records relating to the detainee's behavior while in the Service Provider's custody; provided, however that access to medical and mental health record information be provided in accordance with Article VI. Furthermore, the Service Provider shall retain all records where this right of access applies for a period of two (2) years from the date of the detainee's discharge from the Service Provider's custody. This right of access specifically applies to all inspections and other Facility reports.

Article 10. Modifications and Disputes

- A. Modifications: Actions other than those designated in this Agreement will not bind or incur liability on behalf of either Party. Either Party may request a modification to this Agreement by submitting a written request to the other Party. A modification will become a part of this Agreement only after the ICE Contracting Officer and a duly authorized official of the Service Provider have approved the modification in writing.
- B. Change Orders:
 - 1. The Contracting Officer may, by written order, and with the bilateral agreement of the Service Provider, make changes within the general scope of this Agreement in any one or more of the following:
 - (a) Description of services to be performed, including revisions to the applicable Detention Standards.
 - (b) Place of performance of the transportation, escort and stationary guard services.
 - 2. If any such change causes an increase or decrease in the cost of the services under the Agreement, the Contracting Officer will make an equitable adjustment in the agreement price and will modify the Agreement accordingly.
 - 3. The Service Provider must assert its right to an adjustment under this Article prior to its bilateral agreement of the written order, including a proposal addressing the cost impacts and detailed supporting data.

4. If the Service Provider's proposal includes costs that are determined unreasonable and/or unsupportable, as determined by the Contracting Officer, the Contracting Officer will disallow those costs when determining a revised rate, if any.
5. Failure to agree to any adjustment will be a dispute under the Disputes section of the Agreement.

C. Disputes: The ICE Contracting Officer and the authorized signatory of the Service Provider will settle disputes, questions and concerns arising from this Agreement. Settlement of disputes will be memorialized in a written modification between the ICE Contracting Officer and an authorized signatory of the Service Provider. In the event a dispute is not able to be resolved between the Service Provider and the ICE Contracting Officer, the ICE Contracting Officer will make the final decision. If the Service Provider does not agree with the final decision, the matter may be appealed to the ICE Head of the Contracting Activity (HCA) for resolution. The ICE HCA may employ all methods available to resolve the dispute, including alternative dispute resolution techniques. The Service Provider shall proceed diligently with performance of this Agreement pending final resolution of any dispute.

Article 11. Adjusting the Bed Day Rate

ICE will reimburse the Service Provider at the fixed detainee bed day rate shown in Article I paragraph C. The Service Provider may request a rate adjustment no less than thirty-six (36) months after the effective date of the Agreement unless required by law (see Article 19). After thirty-six (36) months, the Service Provider may request a rate by submitting a new Jail Services Cost Statement with a summary of the rate adjustment, break-out of the requested increase amount, and back-up documentation necessary to support the request. The Parties agree to base the cost portion of the rate adjustment on the principles of allowability and allocability as set forth in OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, federal procurement laws, regulations, and standards in arriving at the bed day rate. If ICE does not receive an official request for a bed day rate adjustment that is supported by the information provided, the fixed bed day rate as stated in this Agreement will be in place for the duration of the Agreement.

ICE reserves the right to audit the actual and/or prospective costs upon which the rate adjustment is based. All rate adjustments are prospective. As the bed day rate is fixed, there are no retroactive adjustment(s).

Article 12. Enrollment, Invoicing, and Payment

A. Enrollment in Electronic Funds Transfer: The Service Provider shall provide ICE with the information needed to make payments by electronic funds transfer (EFT). The Service Provider shall identify their financial institution and related information on Standard Form 3881, Automated Clearing House (ACH) Vendor Miscellaneous Payment Enrollment Form <http://www.fms.treas.gov/pdf/3881.pdf>. The Service Provider shall submit a completed SF 3881 to ICE payment office prior to submitting its initial request

for payment under this Agreement. If the EFT data changes, the Service Provider shall be responsible for providing updated information to the ICE payment office. The information provided under this section shall cause the EFT to go to the Trustee, U.S. Bank National Association, for the Trust created by the Service Provider (San Luis Facility Development Corporation) pursuant to the Trust Indenture dated October 1, 2005, as amended, relating to the issuance of bonds Series 2014 and Series 2014(A).

B. Consolidated Invoicing: The Service Provider shall submit an original monthly itemized invoice within the first ten (10) working days of the month following the calendar month when it provided the services via one of the following three methods:

1. By mail:

DHS, ICE
Burlington Finance Center
P.O. Box 1620
Williston, VT 05495-1620
Attn: ICE-ERO-FOD-FSP

2. By fax: (include a cover sheet with the point of contact and number of pages)

802-288-7658

3. By e-mail:

Invoice.Consolidation@ice.dhs.gov

Invoices submitted by other than these three methods will be returned. The Service Provider's Taxpayer Identification Number (TIN) must be registered in the System for Award Management (<http://www.sam.gov>) prior to award and shall be notated on every invoice submitted to ICE to ensure prompt payment provisions are met. The ICE program office shall also be notated on every invoice.

Each invoice submitted shall contain the following information:

1. Name and address of the Facility;
2. Invoice date and number;
3. Agreement number, line item number and, if applicable, the Task Order number;
4. Terms of any discount for prompt payment offered;
5. Name, title, and phone number of the person to notify in the event of defective invoice;
6. Taxpayer Identification Number (TIN).
7. Total number of bed days; total number of miles.
8. Bed day rate;
9. Number of bed days multiplied by the bed day rate;
10. Name of each detainee;

11. Resident's/detainee's A-number;
12. Specific dates of detention for each resident/detainee;
13. An itemized listing of all other charges;
14. For stationary guard services, the itemized monthly invoice shall state the number of hours being billed, the duration of the billing (times and dates) and the name of the resident(s)/detainee(s) that was guarded.
15. For Mileage, the itemized monthly invoice shall include a copy of the GSA webpage that shows the mileage rate being applied for that invoice.

Items 1 through 15 above shall be included in the invoice. Invoices without the above information may be returned for resubmission.

- C. Payment: ICE will transfer funds electronically through either an Automated Clearing House subject to the banking laws of the United States or the Federal Reserve Wire Transfer System. The Prompt Payment Act applies to this Agreement. The Prompt Payment Act requires ICE to make payments under this Agreement the thirtieth (30th) calendar day after the Burlington Finance Office receives a complete invoice. Either the date on the Federal Government's check or the date it executes an electronic transfer of funds constitutes the payment date. The Prompt Payment Act requires ICE to pay interest on overdue payments to the Service Provider. ICE will determine any interest due in accordance with the Prompt Payment Act provided the Service Provider maintains an active registration in the System for Award Management (SAM) and all information is accurate.

Article 13. ICE Furnished Property

- A. ICE Property Furnished to the Service Provider: ICE may furnish Federal Government property and equipment to the Service Provider. Accountable property remains titled to ICE and shall be returned to the custody of ICE upon termination of the Agreement. The suspension of use of bed space made available to ICE is agreed to be grounds for the recall and return of any or all ICE furnished property.
- B. Service Provider Responsibility: The Service Provider shall not remove ICE property from the Facility without the prior written approval of ICE. The Service Provider shall report any loss or destruction of any ICE property immediately to ICE.

Article 14. Hold Harmless Provisions

Unless specifically addressed by the terms of this Agreement, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees.

- A. Service Provider Liability Limitations: ICE liability for any injury, damage or loss to persons or property arising in the performance of this Agreement and caused by the negligent or tortious conduct of its own officers, employees, and other persons provided coverage pursuant to federal law is governed by the Federal Tort Claims Act, 28 USC 2691 *et seq.*(FTCA). Compensation for work-related injuries for ICE's officers,

employees and covered persons is governed by the Federal Employees Compensation Act (FECA). ICE agrees to the extent permitted under Federal law, to waive all claims and causes of action it may have against the Service Provider for any injury, damage or loss to the Federal Government, not otherwise provided for in this Agreement, as a result of claims paid or judgments incurred under either the FTCA or FECA. The Service Provider shall promptly notify ICE of any claims or lawsuits filed against any ICE employees of which Service Provider is notified.

- B. Federal Government Held Harmless: Service Provider liability for any injury, damage or loss to persons or property arising out of the performance of this Agreement and caused by the negligence of its own officers, employees, agents and representatives is governed by the applicable State tort claims act (A.R.S. §12-820 *et seq.*). ICE will promptly notify the Service Provider of any claims filed against any of Service Provider's employees of which ICE is notified. The Federal Government will be held harmless for any injury, damage or loss to persons or property caused by a Service Provider employee arising in the performance of this Agreement not caused by ICE or its agents.
- C. Defense of Suit: In the event a detainee files suit against the Service Provider contesting the legality of the detainee's incarceration by ICE under this Agreement and/or immigration/citizenship status, or a detainee files suit as a result of an administrative error or omission of the Federal Government, ICE will request that the Department of Justice, as appropriate, move either to have the Service Provider dismissed from such suit; to have ICE substituted as the proper party defendant; or to have the case removed to a court of proper jurisdiction. Regardless of the decision on any such motion, ICE will request that the Department of Justice be responsible for the defense of any suit on these grounds.
- D. ICE Recovery Right: The Service Provider shall do nothing to prejudice ICE's right to recover against third parties for any loss, destruction of, or damage to U.S. Government property. Upon request of the Contracting Officer, the Service Provider shall furnish to ICE all reasonable assistance and cooperation, including assistance in the prosecution of suit and execution of the instruments of assignment in favor of ICE in obtaining recovery.
- E. Service Provider Insurance: The Service Provider and any subcontractor(s) shall maintain insurance in an amount not less than \$3,000,000 to protect the Service Provider from claims under workman's compensation acts and from any other claims for damages for personal injury, including death which may arise from operations under this Agreement whether such operations by the Service Provider itself or by any subcontractor or anyone directly or indirectly employed by either business entity. The Service Provider and its Subcontractor(s) shall maintain General Liability insurance: bodily injury liability coverage written on a comprehensive form of policy of at least \$500,000 per occurrence is required.

Additionally, an automobile liability insurance policy providing for bodily injury and property damage liability covering automobiles operated in the United States shall provide coverage of at least \$200,000 per person and \$500,000 per occurrence for bodily

injury and \$20,000 per occurrence for property coverage. Certificates of such insurance shall be subject to the approval of the CO for adequacy of protection. All insurance certificates required under this Agreement shall provide 30 days advance notice to the Federal Government of any contemplated cancellation.

The Service Provider and its Subcontractor(s) shall ensure that all staff having access to detainee monies and valuables are bonded in an amount sufficient to ensure reimbursement to the detainee by the Service Provider and its Subcontractor(s) in case of loss.

Article 15. Financial Records

- A. Retention of Records: All financial records, supporting documents, statistical records, and other records pertinent to contracts or subordinate agreements under this Agreement shall be retained by the Service Provider for three (3) years for purposes of federal examinations and audit. The three (3) year retention period begins at the end of the first year of completion of service under the Agreement. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three (3) year period, the records must be retained until completion of the action and resolution of all issues which arise from it or until the end of the regular three (3) year period, whichever is later.
- B. Access to Records: ICE and the Comptroller General of the United States, or any of their authorized representatives, have the right of access to any pertinent books, documents, papers or other records of the Service Provider or its subcontractors, which are pertinent to the award, in order to make audits, examinations, excerpts, and transcripts. The rights of access must not be limited to the required retention period but shall last as long as the records are retained.
- C. Delinquent Debt Collection: ICE will hold the Service Provider accountable for any overpayment, or any breach of this Agreement that results in a debt owed to the Federal Government. ICE will apply interest, penalties, and administrative costs to a delinquent debt owed to the Federal Government by the Service Provider pursuant to the Debt Collection Improvement Act of 1982, as amended.

Article 16. Transportation

- A. All transportation of ICE detainees shall be conducted in accordance with the ICE NDS 2000. Except in emergency situations females may not be transported by bus for more than ten hours. Furthermore, except in emergency situations, a single officer may not transport a single detainee of the opposite gender, and if there is an expectation that a pat search will occur during transport, an officer of the same gender as the detainee(s) must be present.

In the event of transportation services involving distances that exceed a twelve (12) hour workday to complete, the Service Provider shall be reimbursed for related costs of

lodging and meals commensurate with the U.S. General Services Administration rates for such within the geographical area of occurrence. Any incurred overtime pay for such services will be reimbursed at the applicable overtime rate for the transportation officer position specified in Article I. C., Rates. Overnight lodging resulting from transportation services shall be approved in advance by the COR or designated ICE official. All transportation services shall be accomplished in an appropriate and economical manner. The circumstances described in this paragraph are allowable contingencies. The unallowable costs under Article 3 (C) 8 do not apply to this paragraph.

- C. The Service Provider personnel provided for the above services shall be of the same qualifications, receive the same training, complete the same security clearances, and wear the same uniforms as those Service Provider personnel provided in the other areas of this Agreement. Minnesota Statute 171.02 allows a licensed peace officer to operate any vehicle or combination of vehicles while on duty.
- D. Transport/Escort/Stationary Services Rate: The Service Provider agrees, upon request of ICE in whose custody an ICE detainee is held, to provide all such ground transportation/escort/stationary services as may be required to transport detainees securely, in a timely manner, to locations as directed by the ICE COR or designated ICE official. At least two (2) qualified law enforcement or correctional officer personnel employed by the Service Provider under their policies, procedures and practices shall perform transport services. Furthermore, except in emergency situations, a single officer may not transport a single detainee of the opposite gender, and if there is an expectation that a pat search will occur during transport, an officer of the same gender as the detainee(s) must be present.
- E. Medical/Legal Transportation: The Service Provider shall provide transportation and escort guard services for ICE detainees to and from a medical facility for outpatient care and attending off-site court proceedings. An officer or officers shall keep the detainee under constant supervision twenty-four (24) hours per day until the detainee is ordered released from the hospital, or at the order of the COR. The number of escorts will be determined by the COR. The Service Provider agrees to augment such practices as may be requested by ICE to enhance specific requirements for security, detainee monitoring, visitation, and contraband control.

The Service Provider shall, upon order of the COR, or upon its own decision in an urgent medical situation with notification to the COR immediately thereafter, transport a detainee to a hospital location. An officer(s) shall keep the detainee under supervision 24 hours per day until the detainee is ordered released from the hospital, or at the order of the COR. The Service Provider shall then return the detainee to the Facility. Indemnities: Furthermore, the Service Provider agrees to hold harmless and indemnify DHS/ICE and its officials in their official and individual capacities from any liability, including third-party liability or worker's compensation, to the extent arising from the conduct of the Service Provider and its employees during the course of transporting ICE detainees.

F. Service Provider Furnished Vehicles: If the Service Provider is to use its own vehicles, the following requirements apply to this Agreement.

1. The Service Provider shall not allow employees to use their personal vehicles to transport detainees.
2. The Service Provider shall furnish suitable vehicles in good condition, approved by the Federal Government, to safely provide the required transportation services. The Service Provider shall comply with all federal and state laws with regard to inspections, licensing, and registration for all vehicles used for transportation.
3. The Service Provider shall furnish vehicles equipped with interior security features including physical separation of detainees from guards.
4. Nothing in this Agreement shall restrict the Service Provider from acquiring additional vehicles as deemed necessary by the Service Provider at no cost to the Federal Government.

G. Federal Government Furnished Vehicles: If ICE authorizes the Service Provider to use Federal Government furnished vehicles, the following requirements apply to this Agreement.

1. If ICE chooses to authorize Service Provider employees to operate Federal Government furnished vehicles, the Federal Government will provide the Service Provider with Federal Government Vehicles and Federal Government Fleet Cards (for the purchase of fuel) for the purpose of transporting detainees to and from ICE Designated Facilities (see Route List or Analysis), or alternative transportation sites, in support of ERO transportation needs under this Agreement. The vehicles assigned for this purpose will remain the property of the Federal Government, and all costs associated with the operation and use of the vehicles, such as, but not limited to, vehicle maintenance and fuel, will be covered through the Federal Government's Fleet Management Program.
2. The Service Provider agrees to be responsible for reimbursement to ICE for any damages sustained by the vehicles as a result of any act or omission on the part of the Service Provider, its employees and or persons acting on behalf of the Service Provider. The Service Provider shall be responsible to promptly report any accidents or damage to the Federal Government Vehicles in accordance with the ICE Management Directives listed below and any other ICE policies that pertain to reporting such damage. The Service Provider agrees to fully cooperate and assist ICE in making any claims against a third party at fault for causing the property damage to the Federal Government Vehicles.

3. In addition, the Service Provider agrees to assume financial responsibility for any claims or litigations filed by persons sustaining personal injuries or property damage for incidents or accidents caused by the negligent acts or omissions of the Service Provider, agents, or other persons acting on behalf of the Service Provider. The Service Provider agrees to fully cooperate and assist ICE in the defense of any claims made against ICE, and in the event of a settlement or judgment entered against ICE for the negligent acts or omissions of the Service Provider employees or agents; the Service Provider agrees to reimburse ICE for said settlement or adverse judgment.
 4. In order for ICE to maintain accurate fleet records of the transportation services, the Service Provider officers utilizing the vehicles shall complete specific documentation that will be provided by ICE, to record the times of vehicle usage for proper hourly guard reimbursement, and to record the inspection of the vehicles for damage each time the vehicles are used. The form that is required is the Official Detail Form. This form is to be filled out at the beginning of each shift. At the end of a shift, the form is to be provided to the ICE Shift Supervisor with a copy to the COR. The Service Provider shall keep the original for three years.
 5. The COR will provide forms to the Service Provider to request and authorize routine maintenance of vehicles.
 6. In addition to this Agreement, ICE is an authorized user of the San Luis Regional Detention and Support Center (Facility) under Detention Services Intergovernmental Agreement of the U.S. Marshals Service #ODT-1-7-0002. Under Modification #15 to #ODT-1-7-0002, ICE will provide vans for airlift guard/transportation services.
 7. The Service Provider shall be responsible for any costs or expenses associated with the return of the vehicles, to include, towing charges, title replacement fees or licensing expenses made necessary by the loss of any paperwork associated with the vehicles.
 8. The Federal Government will provide instruction on the proper use of the Fleet Card to all Service Provider personnel responsible for the operation of any Federal Government Vehicle. The instruction will be in accordance with the DHS Fleet Card Manual.
 9. A list of the Federal Government vehicles authorized for use by the Service Provider shall be provided if applicable.
- H. Training and Compliance: The Service Provider shall comply with NDS 2000 ICE transportation standards related to the number of hours the Service Provider's employee may operate a vehicle. The transportation shall be accomplished in the most economical manner. The Service Provider personnel provided for the above services shall be of the

same qualifications, receive training, complete the same security clearances, and wear the same uniforms as those personnel provided for in other areas of this Agreement.

- I. Miscellaneous Transportation: The COR may direct the Service Provider to transport detainees to unspecified, miscellaneous locations.
- J. When the COR provides documents to the Service Provider concerning the detainee(s) to be transported and/or escorted, the Service Provider shall deliver these documents only to the named authorized recipients. The Service Provider shall ensure the material is kept confidential and not viewed by any person other than the authorized recipient.
- K. The Service Provider shall establish a fully operational communication system compatible with ICE communication equipment that has direct and immediate contact with all transportation vehicles and post assignments. Upon demand, the COR shall be provided with current status of all vehicles and post assignment employees.
- L. The Service Provider will make every attempt to comply with pre-scheduled departures. If by unforeseeable circumstances, (weather, traffic, accidents, etc.) the Service Provider will communicate these situations with ICE.
- M. Armed Transportation Officers: All transportation Detention Officers shall be armed in the performance of these duties.
- N. Billing Procedures: The itemized monthly invoice for such stationary guard services shall state the number of hours being billed, the duration of the billing (times and dates) and the name of the detainee(s) that was guarded.
- O. Anticipated Transportation Routes: The following transportation routes and/or destinations are anticipated requirements for this Agreement. Mileage may vary from the table depending on the starting point of the destination. These routes are not all-inclusive and should not be limited to the following:

Mileage From FACILITY	Locations	City	Frequency
	See COR		

- P. Transportation Reporting Requirements: The Service Provider shall document all Transportation movements. This data will be collected through form G-391 in Excel-based format and submitted to the COR every month, with every invoice. Additionally, Quarterly Status Reports shall be provided as indicated below:

Reporting Requirements	Description
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<p>1. Monthly Status Report</p>	<p>The report will include at a minimum the information required for each G-391 for every trip as indicated in the G-391 Data Collection Categories and Descriptions. An electronic excel based template for data collection will be provided to the contractor upon award to submit as a part of the Monthly Status Report. A breakdown of hours and personnel will also be provided and divided into Transportation Guard Hours (time spent performing transportation-related activities) and Stationary Guard Hours (time spent performing detention-related stationary guard activities). A breakdown of the total number of vehicles used (year, model, and capacity) will also be required if the contractor is using contractor-owned vehicles. A list of government vehicles used will be required if the contractor uses federal government-owned vehicles. This information will be available electronically to government users and submitted monthly with each Service Provider invoice.</p>
<p>2. Quarterly Status Report</p>	<p>This report will be produced every three months to document and provide the vehicle telematics data collected from all movement of ERO serviced contract hours for the previous quarter. It will include a summation of the previous Monthly Status reports and document any fluctuations in demand or trends in provided service. Recommendations for surges or lulls will also be included in the quarterly performance report along with the Service Provider’s capability to respond.</p>

Article 17. Guard Services

- A. The Service Provider agrees to provide stationary guard services, at a separately agreed hourly rate, on demand by the COR and shall include, but not limited to, escorting and guarding detainees to medical or doctor's appointments, hearings, ICE interviews, and any other remote location requested by the COR. Qualified detention officer personnel employed by the Service Provider under its policies, procedures, and practices will perform such services. The Service Provider agrees to augment such practices as may be requested by CO or COR to enhance specific requirements for security, detainee monitoring, visitation, and contraband control. Public contact is prohibited unless authorized in advance by the COR.

- B. The Service Provider shall provide, and be reimbursed for, two officers for each such remote location, unless additional officers are required, per the direction of the COR or designated ICE officer.
- C. The itemized monthly invoice for such stationary guard services shall state the number of hours being billed, the duration of the billing (times and dates) and the names of the detainees that were guarded. Such services shall be denoted as a separate item on submitted invoices. ICE agrees to reimburse the Service Provider for actual stationary guard services provided during the invoiced period.

Article 18. Contracting Officer's Representative (COR)

- A. The COR will be designated by the Contracting Officer. When and if the COR duties are reassigned, an administrative modification will be issued to reflect the changes. This designation does not include authority to sign contractual documents or to otherwise commit to, or issue changes, which could affect the price, quantity, or performance of this Agreement.
- B. Should the Service Provider believe it has received direction that is not within the scope of the Agreement; the Service Provider shall not proceed with any portion that is not within the scope of the Agreement without first contacting the Contracting Officer. The Service Provider shall continue performance of efforts that are deemed within the scope.

Article 19. Labor Standards and Wage Determination

- A. The Service Contract Act, 41 U.S.C. 351 *et seq.*, Title 29, Part 4 Labor Standards for Federal Service Contracts, is hereby incorporated. These standards and provisions are included in every contract and IGSA entered into by the United States or the District of Columbia, in excess of \$2,500, or in an indefinite amount, the principal purpose of which is to furnish services through the use of service employees.
- B. Wage Determination: Each service employee employed in the performance of this Agreement shall be paid not less than the minimum monetary wages and shall be furnished fringe benefits in accordance with the wages and fringe benefits determined by the Secretary of Labor or authorized representative, as specified in any wage determination attached to this Agreement.
- C. Wage Determination Anniversary. Wage determinations under this Article 19 shall be made on the Anniversary date of August 3.

Article 20. Notification and Public Disclosures

- A. Information obtained or developed as a result of this IGSA is under the control of ICE and is subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations, and executive orders or as ordered by a court. Insofar as any

documents created by the Service Provider contain information developed or obtained as a result of this IGSA, such documents shall be subject to public disclosure only pursuant to the provisions of applicable federal laws, regulations, and executive orders or as ordered by a court. To the extent the Service Provider intends to release the IGSA or any information relating to or exchanged under, this IGSA, the Service Provider agrees to coordinate with the ICE Contracting Officer prior to such release. There shall be no public disclosures regarding this Agreement made by the Service Provider (or any subcontractors) without review and approval of such disclosure by ICE.

- B. The CO shall be notified in writing of all litigation pertaining to this IGSA and provided copies of any pleadings filed or said litigation within five working days of the filing. The Service Provider shall cooperate with Federal Government legal staff and/or the United States Attorney regarding any requests pertaining to federal or Service Provider litigation.
- C. The Service Provider shall notify the CO when a member of the United States Congress requests information or makes a request to visit the Facility. The Service Provider shall coordinate all public information related issues pertaining to ICE detainees with the CO. All press statements and releases shall be cleared, in advance, with the ICE Office of Public Affairs. The Service Provider shall promptly make public announcements stating the facts of unusual or newsworthy incidents to local media. Examples of such events include, but are not limited to: deaths, escapes from custody, and Facility emergencies.
- D. With respect to public announcements and press statements on matters related to ICE Detainees and ICE operations, the Service Provider shall ensure employees agree to use appropriate disclaimers clearly stating the employees' opinions do not necessarily reflect the position of the United States Government in any public presentations they make or articles they write that relate to any aspect of contract performance or the Facility operations.

Article 21. Incident Reporting

- A. The COR shall be notified immediately in the event of all serious incidents on matters related to ICE detainees and ICE operations. The COR will provide after-hours contact information to the Service Provider at the time of award.
- B. Serious incidents include, but are not limited to: activation of disturbance control team(s); disturbances (including gang activities, group demonstrations, food boycotts, work strikes, work-place violence, civil disturbances/protests); staff use of force including use of lethal and less-lethal force (includes inmates in restraints more than eight hours); assaults on staff/inmates resulting in injuries requiring medical attention (does not include routine medical evaluation after the incident); fights resulting in injuries requiring medical attention; fires; full or partial lock down of the Facility; escape; weapons discharge; suicide attempts; deaths; declared or non-declared hunger strikes; adverse incidents that attract unusual interest or significant publicity; adverse weather (e.g., hurricanes, floods, ice/snow storms, heat waves, tornadoes); fence damage; power outages; bomb threats; detainee admitted to a

community hospital; witness security cases taken outside the Facility; significant environmental problems that impact the facility operations; transportation accidents (i.e. airlift, bus) resulting in injuries, death or property damage; and sexual assaults.

- C. The Service Provider agrees to cooperate with any Federal investigation concerning incidents and treatment involving ICE detainees to the full extent of its authorities, including providing access to any relevant databases, personnel, and documents.

Article 22. Detainee Privacy

- A. The Service Provider agrees to comply with the Privacy Act of 1974 (“Act”) and the agency rules and regulations issued under the Act in the design, development, or operation of any system of records on individuals to accomplish an agency function when the Agreement specifically identifies (i) the systems of records; and (ii) the design, development, or operation work that the Service Provider is to perform. The Service Provider shall also include the Privacy Act into any and all subcontracts when the work statement in the proposed subcontract requires the redesign, development, or operation of a system of records on individuals that is subject to the Act; and
- B. In the event of violations of the Act, a civil action may be brought against the agency involved when the violation concerns the design, development, or operation of a system of records on individuals to accomplish an agency function, and criminal penalties may be imposed upon the officers or employees of the agency when the violation concerns the operation of a system of records on individuals to accomplish an agency function. For purposes of the Act, when the agreement is for the operation of a system of records on individuals to accomplish an agency function, the Service Provider is considered to be an employee of the agency.
 - 1. “Operation of a system of records,” as used in this Article, means performance of any of the activities associated with maintaining the system of records, including the collection, use, and dissemination of records.
 - 2. “Record,” as used in this Article, means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, education, financial transactions, medical history, and criminal or employment history and that contains the person’s name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint or voiceprint or a photograph.
 - 3. “System of records on individuals,” as used in this Article, means a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

Article 23. Zero Tolerance for Sexual Harassment, Abuse, and Assault

- A. The Service Provider shall develop and implement a comprehensive sexual abuse/assault prevention and intervention program of which training will include training on working with vulnerable populations and addressing their vulnerability in the general population. This program shall include training that is given separately to both staff and detainees, in accordance with the Prison Rape Elimination Act (PREA) and NDS 2000.
- B. The Service Provider will ensure that information regarding the facility's policy on sexual abuse/assault is included in the detainee handbook; that the facility articulates to staff and to detainees and adheres to a standard of zero tolerance for incidents of sexual abuse or assault; that detainees shall be encouraged to promptly report acts of harassment of a sexual nature, or abuse or signs of abuse observed; that victims of sexual abuse are given timely access to emergency medical treatment and crisis intervention services; that training is included for all staff to ensure that they fulfill their responsibilities under the Service Providers' Sexual Abuse and Assault Prevention and Intervention Program; that the facility reports immediately all sexual abuse and/or assault to ICE/ERO; that the Service Provider develops and implements a policy that includes: an evidence protocol for sexual assault, including access to a forensic medical exam, an internal administrative investigation process that will not compromise a criminal investigation. The Service Provider will also maintain a policy that requires medical staff to report allegations or suspicions of sexual assault to appropriate facility staff, how the victim's medical, mental health and future safety needs will be addressed; appropriate disciplinary sanctions, how a detainee may contact the Office of the Inspector General to confidentially report sexual abuse or assault.

Article 24. Detainee Telephone Services (DTS)

- A. The Service Provider shall provide detainees with reasonable and equitable access to telephones as specified in the ICE 2000 NDS standard on Telephone Access. Telephones shall be located in an area that provides for a reasonable degree of privacy and a minimal amount of environmental noise during phone calls.
- B. If authorized to do so under applicable law, the Service Provider shall monitor and record detainee conversations. If detainee telephone conversations can be monitored under applicable law, the Service Provider shall provide notice to detainees of the potential for monitoring. However, the Service Provider shall also provide procedures at the Facility for detainees to be able to place unmonitored telephone calls to their attorneys.
- C. Telephone rates shall not exceed the FCC rates for inmate telephone service, as well as State-established rates where applicable, and shall conform to all applicable federal, state, and local telephone regulations.

- D. Video phones, portable electronics or other enhanced telecommunications features provided by the DTS contractor to ICE detainees, based upon concurrence between ICE and the Service Provider, may be added in the future subject to negotiation at no cost to ICE. These features may not in any way compromise the safety and security of the detainees, staff or the Facility. Any new or enhanced telecommunications features must be integrated within the DTS service and can NOT be a separate system or software from the DTS service. Such capabilities may now or in the future include; video visitation, limited web access for law library, email, kites, commissary ordering, educational tools, news, sports, and video games. Pricing for the use of these technologies will be set by the DTS provider, subject to negotiations with ICE, and shall be negotiated at a future time and date if required.
- E. For Shared Facilities: ICE recognizes the Service Provider may have an existing contract with a Telecommunications Company to provide telephone service to ICE detainees and other inmates. Notwithstanding any existing Telecommunications contract, the Service Provider shall require the Telecommunications Company to provide connectivity to the DTS Contractor for ICE detainee pro bono telephone calls. The Service Provider (and the Telecommunications Company) shall make all arrangements with the DTS Contractor independently from this Agreement. If the Service Provider has an existing contract with a Telecommunications Company, ICE requires that ICE detainees have direct access to the DTS Contractor for collect and prepaid calls at the expiration of any current contract. The DTS Contractor shall then be allowed to install vending debit machines and shall receive 100 percent of all revenues collected by sale of prepaid debit services to ICE detainees. The DTS Contractor shall be responsible for the costs incurred to provide the pro bono services, and the maintenance and operation of the system, including a standard compensation to the Telecommunications Company. The Service Provider shall not be entitled to any commissions, fees, or revenues generated by the use of the DTS.
- F. The Service Provider shall inspect telephones for serviceability, in accordance with ICE 2000 NDS and ICE policies and procedures. The Service Provider shall notify the COR or ICE designee of any inoperable telephones.

G. ICE DTS Contractor Information:

Talton Communications
910 Ravenwood Dr.
Selma, AL 36701

Robin Hall
Customer Relations Manager
(334) 375-7842
robin@taltoncommunications.com

Mike Oslund
Operations Manager
(334) 375-4200
michael@taltoncommunications.com

Article 25. Government Use of Wireless Communication Devices

All personnel that have been issued a Federal Government owned wireless communication device, including but not limited to, cellular telephones, pagers or wireless Internet devices, are authorized to possess and use those items in all areas of the Facility in which ICE detainees are present.

Article 26. Certified Cost and Pricing Data

A) Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data

(a) Exceptions from certified cost or pricing data.

(1) In lieu of submitting certified cost or pricing data, offerors may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable.

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document.

(ii) *Commercial item exception.* For a commercial item exception, the offeror shall submit, at minimum, information on prices at which the same item or similar items have previously been sold in the commercial market that is adequate for evaluating the reasonableness of the price for this acquisition. Such information may include –

(A) For catalog items, a copy of or identification of the catalog and its date, or the appropriate pages for the offered items, provide a copy or describe current discount policies and price lists (published or unpublished), *e.g.*, wholesale, original equipment manufacturer, or reseller. Also explain the basis of each offered price and its relationship to the established catalog price, including how the proposed price relates to the price of recent sales in quantities similar to the proposed quantities;

(B) For market-priced items, the source and date or period of the market quotation or other basis for market price, the base amount, and applicable discounts. In addition, describe the nature of the market;

© For items included on an active Federal Supply Service Multiple Award Schedule contract, proof that an exception has been granted for the schedule item.

(2) The offeror grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this provision, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the offeror's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for certified cost or pricing data.* If the offeror is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The offeror shall prepare and submit certified cost or pricing data, and data other than certified cost or pricing data, and supporting attachments.

(2) As soon as practicable after agreement on price, but before IGSA award, the offeror shall submit a Certificate of Current Cost or Pricing Data, the format of which is at the end of this Article.

B) Requirements for Certified Cost or Pricing Data and Data Other Than Certified Cost or Pricing Data – Modifications

(a) *Exceptions from certified cost or pricing data.*

(1) In lieu of submitting certified cost or pricing data for modifications under this IGSA, for price adjustments expected to exceed \$700,000 on the date of the agreement on price or the date of the award, whichever is later, the Service Provider may submit a written request for exception by submitting the information described in the following subparagraphs. The Contracting Officer may require additional supporting information, but only to the extent necessary to determine whether an exception should be granted, and whether the price is fair and reasonable –

(i) *Identification of the law or regulation establishing the price offered.* If the price is controlled under law by periodic rulings, reviews, or similar actions of a governmental body, attach a copy of the controlling document.

(2) The Service Provider grants the Contracting Officer or an authorized representative the right to examine, at any time before award, books, records, documents, or other directly pertinent records to verify any request for an exception under this clause, and the reasonableness of price. For items priced using catalog or market prices, or law or regulation, access does not extend to cost or profit information or other data relevant solely to the Service Provider's determination of the prices to be offered in the catalog or marketplace.

(b) *Requirements for certified cost or pricing data.* If the Service Provider is not granted an exception from the requirement to submit certified cost or pricing data, the following applies:

(1) The Service Provider shall submit certified cost or pricing data, data other than certified cost or pricing data, and supporting attachments.

(2) As soon as practicable after agreement on price, but before award, the Service Provider shall submit a Certificate of Current Cost or Pricing Data. The form is included at the end of this Article.

C) Subcontractor Certified Cost or Pricing Data

(a) Before awarding any subcontract expected to exceed \$700,000 on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$700,000, the Service Provider shall require the Subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), to include any information reasonably required to explain the Subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price, unless (1) the prices are based upon adequate price competition, or (2) if a waiver has been granted.

(b) The Service Provider shall require the Subcontractor to certify in substantially the form at the end of this Article that, to the best of its knowledge and belief, the data submitted under paragraph (a) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(c) In each subcontract that exceeds \$700,000, when entered into, the Service Provider shall insert either -

(1) The substance of this clause, including this paragraph (c), if paragraph (a) of this clause requires submission of certified cost or pricing data for the subcontract; or

(2) The substance of the Section below entitled "Subcontractor Certified Cost or Pricing Data - Modifications."

D) Subcontractor Certified Cost or Pricing Data – Modifications

(a) The requirements of paragraphs (b) and (c) of this Section shall –

(1) Become operative only for any modification to this IGSA involving a pricing adjustment expected to exceed \$700,000; and

(2) Be limited to such modifications.

(b) Before awarding any subcontract expected to exceed \$700,000, on the date of agreement on price or the date of award, whichever is later; or before pricing any subcontract modification involving a pricing adjustment expected to exceed \$700,000, the Service Provider shall require the Subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), to include any information reasonably required to explain the Subcontractor's estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price, unless (1) prices of the modification are based upon adequate price competition, or (2) if a waiver has been granted.

(c) The Service Provider shall require the Subcontractor to certify in substantially the form at the end of this Article that, to the best of its knowledge and belief, the data submitted under

paragraph (b) of this clause were accurate, complete, and current as of the date of agreement on the negotiated price of the subcontract or subcontract modification.

(d) The Service Provider shall insert the substance of this Article, including this paragraph (d), in each subcontract that exceeds \$700,000 on the date of agreement on price or the date of award, whichever is later.

E) Price Reduction for Defective Certified Cost or Pricing Data

(a) If any price, including profit or fee, negotiated in connection with this IGSA, or any cost reimbursable under this IGSA, was increased by any significant amount because –

(1) The Service Provider or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data;

(2) A subcontractor or prospective subcontractor furnished the Service Provider certified cost or pricing data that were not complete, accurate, and current as certified in the Service Provider's Certificate of Current Cost or Pricing Data; or

(3) Any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly, and the IGSA shall be modified to reflect the reduction.

(b) Any reduction in the IGSA price under paragraph (a) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Service Provider, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Service Provider; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(c)

(1) If the Contracting Officer determines under paragraph (a) of this clause that a price or cost reduction should be made, the Service Provider agrees not to raise the following matters as a defense:

(i) The Service Provider or subcontractor was a sole source supplier or otherwise was in a superior bargaining position, and thus the price of the IGSA would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Service Provider or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The IGSA was based on an agreement about the total cost of the IGSA, and there was no agreement about the cost of each item procured under the IGSA.

(iv) The Service Provider or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)

(i) Except as prohibited by subdivision ©(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of an IGSA price reduction if –

(A) The Service Provider certifies to the Contracting Officer that, to the best of the Service Provider’s knowledge and belief, the Service Provider is entitled to the offset in the amount requested; and

(B) The Service Provider proves that the certified cost or pricing data were available before the “as of” date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if –

(A) The understated data were known by the Service Provider to be understated before the “as of” date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Federal Government proves that the facts demonstrate that the IGSA price would not have increased in the amount to be offset even if the available data had been submitted before the “as of” date specified on its Certificate of Current Cost or Pricing Data.

(d) If any reduction in the IGSA price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Service Provider shall be liable to and shall pay the United States at the time such overpayment is repaid –

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Service Provider to the date the Federal Government is repaid by the Service Provider at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Service Provider or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

F) Price Reduction for Defective Certified Cost or Pricing Data - Modifications

(a) This Article shall become operative only for any modification to this IGSA involving a pricing adjustment expected to exceed \$700,000, except that this Article does not apply to any modification (1) where prices of the modification are based upon adequate price competition, or (2) when a waiver has been granted.

(b) If any price, including profit or fee, negotiated in connection with any modification under this clause, or any cost reimbursable under this IGSA, was increased by any significant amount because

(1) the Service Provider or a subcontractor furnished certified cost or pricing data that were not complete, accurate, and current as certified in its Certificate of Current Cost or Pricing Data,

(2) a subcontractor or prospective subcontractor furnished the Service Provider certified cost or pricing data that were not complete, accurate, and current as certified in the Service Provider's Certificate of Current Cost or Pricing Data, or

(3) any of these parties furnished data of any description that were not accurate, the price or cost shall be reduced accordingly, and the IGSA shall be modified to reflect the reduction. This right to a price reduction is limited to that resulting from defects in data relating to modifications for which this clause becomes operative under paragraph (a) of this clause.

(c) Any reduction in the IGSA price under paragraph (b) of this clause due to defective data from a prospective subcontractor that was not subsequently awarded the subcontract shall be limited to the amount, plus applicable overhead and profit markup, by which (1) the actual subcontract or (2) the actual cost to the Service Provider, if there was no subcontract, was less than the prospective subcontract cost estimate submitted by the Service Provider; provided, that the actual subcontract price was not itself affected by defective certified cost or pricing data.

(d)

(1) If the Contracting Officer determines under paragraph (b) of this clause that a price or cost reduction should be made, the Service Provider agrees not to raise the following matters as a defense:

(i) The Service Provider or subcontractor was a sole source supplier or otherwise was in a superior bargaining position, and thus the price of the IGSA would not have been modified even if accurate, complete, and current certified cost or pricing data had been submitted.

(ii) The Contracting Officer should have known that the certified cost or pricing data in issue were defective even though the Service Provider or subcontractor took no affirmative action to bring the character of the data to the attention of the Contracting Officer.

(iii) The IGSA was based on an agreement about the total cost of the IGSA, and there was no agreement about the cost of each item procured under the IGSA.

(iv) The Service Provider or subcontractor did not submit a Certificate of Current Cost or Pricing Data.

(2)

(i) Except as prohibited by subdivision (d)(2)(ii) of this clause, an offset in an amount determined appropriate by the Contracting Officer based upon the facts shall be allowed against the amount of an IGSA price reduction if -

(A) The Service Provider certifies to the Contracting Officer that, to the best of the Service Provider's knowledge and belief, the Service Provider is entitled to the offset in the amount requested; and

(B) The Service Provider proves that the certified cost or pricing data were available before the "as of" date specified on its Certificate of Current Cost or Pricing Data, and that the data were not submitted before such date.

(ii) An offset shall not be allowed if -

(A) The understated data were known by the Service Provider to be understated before the "as of" date specified on its Certificate of Current Cost or Pricing Data; or

(B) The Federal Government proves that the facts demonstrate that the IGSA price would not have increased in the amount to be offset even if the available data had been submitted before the "as of" date specified on its Certificate of Current Cost or Pricing Data.

(e) If any reduction in the IGSA price under this clause reduces the price of items for which payment was made prior to the date of the modification reflecting the price reduction, the Service Provider shall be liable to and shall pay the United States at the time such overpayment is repaid -

(1) Simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the Service Provider to the date the Federal Government is repaid by the Service Provider at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2); and

(2) A penalty equal to the amount of the overpayment, if the Service Provider or subcontractor knowingly submitted certified cost or pricing data that were incomplete, inaccurate, or noncurrent.

Certificate of Current Cost or Pricing Data

This is to certify that, to the best of my knowledge and belief, the cost or pricing data submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of ____* are accurate, complete, and current as of ____**. This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Federal Government that are part of the proposal.

Service Provider _____

Signature _____

Name _____

Title _____

Date of execution*** _____

* Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (e.g., RFP No.).

** Insert the day, month, and year when price negotiations were concluded, and price agreement that was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price.

***** Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.**

Article 27. Combating Trafficking in Persons

(a) *Definitions.* As used in this clause—

“Coercion” means—

- (1) Threats of serious harm to or physical restraint against any person;
- (2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or
- (3) The abuse or threatened abuse of the legal process.

“Commercial sex act” means any sex act on account of which anything of value is given to or received by any person.

“Debt bondage” means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

“Employee” means an employee of the Service Provider directly engaged in the performance of work under the contract who has other than a minimal impact or involvement in contract performance.

“Forced Labor” means knowingly providing or obtaining the labor or services of a person—

- (1) By threats of serious harm to, or physical restraint against, that person or another person;
- (2) By means of any scheme, plan, or pattern intended to cause the person to believe that, if the person did not perform such labor or services, that person or another person would suffer serious harm or physical restraint; or
- (3) By means of the abuse or threatened abuse of law or the legal process.

“Involuntary servitude” includes a condition of servitude induced by means of—

- (1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or
- (2) The abuse or threatened abuse of the legal process.

“Severe forms of trafficking in persons” means—

- (1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- (2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

“Sex trafficking” means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

(b) *Policy.* The United States Government has adopted a zero tolerance policy regarding trafficking in persons. Contractors and contractor employees shall not—

- (1) Engage in severe forms of trafficking in persons during the period of performance of the contract;
- (2) Procure commercial sex acts during the period of performance of the contract; or
- (3) Use forced labor in the performance of the contract.

(c) *Service Provider requirements.* The Service Provider shall—

- (1) Notify its employees of—
 - (i) The United States Government’s zero-tolerance policy described in paragraph (b) of this clause; and
 - (ii) The actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, or termination of employment; and
- (2) Take appropriate action, up to and including termination, against employees or subcontractors that violate the policy in paragraph (b) of this clause.

(d) *Notification.* The Service Provider shall inform the Contracting Officer immediately of—

- (1) Any information it receives from any source (including host country law enforcement) that alleges a Service Provider employee, subcontractor, or subcontractor employee has engaged in conduct that violates this policy; and
- (2) Any actions taken against Service Provider employees, subcontractors, or subcontractor employees pursuant to this clause.

(e) *Remedies.* In addition to other remedies available to the Federal Government, the Service Provider's failure to comply with the requirements of paragraphs (c), (d), or (f) of this clause may result in—

- (1) Requiring the Service Provider to remove a Service Provider employee or employees from the performance of the contract;
- (2) Requiring the Service Provider to terminate a subcontract;
- (3) Suspension of contract payments;
- (4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Federal Government determined Service Provider non-compliance;
- (5) Termination of the contract for default or cause, in accordance with the termination clause of this Agreement; or
- (6) Suspension or debarment.

(f) *Subcontracts.* The Service Provider shall include the substance of this clause, including this paragraph (f), in all subcontracts.

(g) *Mitigating Factor.* The Contracting Officer may consider whether the Service Provider had a Trafficking in Persons awareness program at the time of the violation as a mitigating factor when determining remedies. Additional information about Trafficking in Persons and examples of awareness programs can be found at the website for the Department of State's Office to Monitor Combat Trafficking in Persons at <http://www.state.gov/g/tip>.

Article 28. Order of Precedence

Should there be a conflict between the NDS 2000 and other any other term and/or condition of the IGSA, the Service Provider shall contact the Contracting Officer for clarification.

Article 29. Quality Assurance Surveillance Program (QASP)

- A. The Federal Government's Quality Assurance Surveillance Program is based on the premise that the Service Provider, and not the Federal Government, is responsible for management and quality control actions to meet the terms of the Agreement. The

Quality Assurance Surveillance Plan (QASP) procedures recognize that unforeseen problems do occur. Good management and use of an adequate Quality Control Plan will allow the Facility to operate within acceptable quality levels.

- B. Each phase of the services rendered under this Agreement is subject to inspection both during the Service Provider's operations and after completion of the tasks.
- C. When the Service Provider is advised of any unsatisfactory condition(s), the Service Provider shall submit a written report to the COR addressing corrective/preventive actions taken. The QASP is not a substitute for quality control by the Service Provider.
- D. The COR may check the Service Provider's performance and document any noncompliance; only the Contracting Officer may take formal action against the Service Provider for unsatisfactory performance.
- E. The Federal Government may reduce the invoice or otherwise withhold payment for any individual item of nonconformance observed. The Federal Government may apply various inspection and extrapolation techniques (i.e., 100 % surveillance, random sampling, planned sampling, unscheduled inspections) to determine the quality of services, the appropriate reductions, and the total payment due.
- F. This Agreement sets forth the procedures and guidelines that ICE will use to inspect the technical performance of the Service Provider. It presents the financial values and mechanisms for applying adjustments to the Service Provider's invoices as dictated by work performance measured to the desired level of accomplishment.
 - 1. The purpose of the QASP is to:
 - a. Define the roles and responsibilities of participating Federal Government officials.
 - b. Define the types of work to be performed.
 - c. Describe the evaluation methods that will be employed by the Federal Government in assessing the Service Provider's performance.
 - d. Describe the process of performance documentation.
 - 2. Roles and Responsibilities of Participating Federal Government Officials
 - a. The COR(s) will be responsible for monitoring, assessing, recording, and reporting on the technical performance of the Service Provider on a day-to-day basis. The COR(s) will have primary responsibility for completing "Quality Assurance Surveillance Forms" to document their inspection and evaluation of the Service Provider's work performance.
 - b. The Contracting Officer (CO) or designee has overall responsibility for evaluating the Service Provider's performance in areas of contract compliance, contract administration, and cost and property control. The CO shall review the COR's evaluation of the Service Provider's

performance and invoices. If applicable, deductions will be assessed in accordance with the evaluation of the Service Provider's performance, e.g., monetary adjustments for inadequate performance.

- G. The rights of the Federal Government and remedies described in this section are in addition to all other rights and remedies set forth in this Agreement. Any reductions in the Service Provider's invoice shall reflect the contract's reduced value resulting from the Service

Provider's failure to perform required services. The Service Provider shall not be relieved of the full performance of the services hereunder and may be terminated for default based upon inadequate performance of services, even if a reduction was previously taken for any inadequate performance.

Article 30. Information Governance and Privacy

ICE Information Governance and Privacy Requirements Clause (JUL 2017)

Guidance: In addition to Federal Acquisition Regulation (FAR) 52.224-1 Privacy Act Notification (APR 1984), 52.224-2 Privacy Act (APR 1984), FAR 52.224-3 Privacy Training (JAN 2017), and Homeland Security Acquisition Regulation (HSAR) Clauses, the following IGP clause must be included in its entirety in all contracts. No section of this clause may be read as self-deleting unless the terms of the contract meet the requirements for self-deletion as specified in this clause.

A. Limiting Access to Privacy Act and Other Sensitive Information

(1) Privacy Act Information

In accordance with FAR 52.224-1 Privacy Act Notification (APR 1984), and FAR 52.224-2 Privacy Act (APR 1984), if this contract requires contractor personnel to have access to information protected by the Privacy Act of 1974 the contractor is advised that the relevant DHS system of records notices (SORNs) applicable to this Privacy Act information may be found at www.dhs.gov/privacy. Applicable SORNs of other agencies may be accessed through the agencies' websites or by searching FDsys, the Federal Digital System, available at <http://www.gpo.gov/fdsys/>. SORNs may be updated at any time.

(2) Prohibition on Performing Work Outside a Federal Government Facility/Network/Equipment

The Service Provider shall perform all tasks on authorized Federal Government networks, using Federal Government-furnished IT and other equipment and/or Workplace as a Service (WaaS) if WaaS is authorized by the statement of work. Federal Government information shall remain within the confines of authorized Federal Government networks at all times. Except where telework is specifically authorized within this contract, the Service Provider shall perform all tasks described in this document at authorized Federal Government facilities; the Service Provider is prohibited from performing these tasks at or removing Federal Government-furnished information to any other facility; and Federal Government information shall remain within the confines of authorized Federal Government facilities at all times. Service Providers may only access classified materials on government furnished equipment in authorized government-owned facilities regardless of telework authorizations.

(3) Prior Approval Required to Hire Subcontractors

The Service Provider is required to obtain the Contracting Officer's approval prior to engaging in any contractual relationship (Subcontractor) in support of this Agreement requiring the disclosure of information, documentary material and/or records generated under or relating to this Agreement. The Service Provider (and any Subcontractor) is required to abide by Federal Government and Agency guidance for protecting sensitive and proprietary information.

(4) Separation Checklist for Service Provider Employees

Service Provider shall complete a separation checklist before any employee or Subcontractor employee terminates working on the Agreement. The separation checklist must verify: (1) return of any Federal Government-furnished equipment; (2) return or proper disposal of sensitive personally identifiable information (PII), in paper or electronic form, in the custody of the employee or Subcontractor employee including the sanitization of data on any computer systems or media as appropriate; and (3) termination of any technological access to the Service Provider's facilities or systems that would permit the terminated employee's access to sensitive PII.

In the event of adverse job actions resulting in the dismissal of an employee or Subcontractor employee, the Service Provider shall notify the Contracting Officer's Representative (COR) within 24 hours. For normal separations, the Service Provider shall submit the checklist on the last day of employment or work on the Agreement.

As requested, contractors shall assist the ICE Point of Contact (ICE/POC), Contracting Officer, or COR with completing ICE Form 50-005/Service Provider Employee Separation Clearance Checklist by returning all Federal Government-furnished property including but not limited to computer equipment, media, credentials and passports, smart cards, mobile devices, Personal Identity Verification (PIV) cards, calling cards, and keys and terminating access to all user accounts and systems.

B. Privacy Training, Safeguarding, and Remediation

If the Safeguarding of Sensitive Information (MAR 2015) and Information Technology Security and Privacy Training (MAR 2015) clauses are included in this contract, section B of this clause is deemed self-deleting.

(1) Required Security and Privacy Training for Service Providers

Service Provider shall provide training for all employees, including Subcontractors and independent contractors who have access to sensitive personally identifiable information (PII) as well as the creation, use, dissemination and/or destruction of sensitive PII at the outset of the employee's work on the contract and every year thereafter. Training must include procedures on how to properly handle sensitive PII, including security requirements for the transporting or transmission of sensitive PII, and reporting requirements for a suspected breach or loss of sensitive PII. All Service Provider employees are required to take the *Privacy at DHS: Protecting Personal Information* training course. This course, along with more information about DHS security and training requirements for Service Providers, is available at www.dhs.gov/dhs-security-and-training-requirements-contractors. The Federal Information Security Management

Act (FISMA) requires all individuals accessing ICE information to take the annual Information Assurance Awareness Training course. These courses are available through the ICE intranet site, or the Agency may also make the training available through hypertext links or CD. The Service Provider shall maintain copies of employees' certificates of completion as a record of compliance and must submit an annual e-mail notification to the ICE Contracting Officer's Representative that the required training has been completed for all the Service Provider's employees.

(2) Safeguarding Sensitive PII Requirement

Service Provider employees shall comply with the Handbook for Safeguarding sensitive PII at DHS at all times when handling sensitive PII, including the encryption of sensitive PII as required in the Handbook. This requirement will be flowed down to all subcontracts and lower tiered subcontracts as well.

(3) Non-Disclosure Agreement Requirement

All Service Provider personnel that may have access to PII or other sensitive information shall be required to sign a Non-Disclosure Agreement (DHS Form 11000-6) prior to commencing work. The Service Provider shall maintain signed copies of the NDA for all employees as a record of compliance. The Service Provider shall provide copies of the signed NDA to the Contracting Officer's Representative (COR) no later than two (2) days after execution of the form.

(4) Prohibition on Use of PII in Vendor Billing and Administrative Records

The Service Provider's invoicing, billing, and other financial/administrative records/databases may not store or include any sensitive Federal Government information, such as PII that is created, obtained, or provided during the performance of the contract. It is acceptable to list the names, titles and contact information for the Contracting Officer, Contracting Officer's Representative, or other ICE personnel associated with the administration of the contract in the invoices as needed.

(5) Reporting Suspected Loss of Sensitive PII

Service Providers must report the suspected loss or compromise of sensitive PII to ICE in a timely manner and cooperate with ICE's inquiry into the incident and efforts to remediate any harm to potential victims.

1. The Service Provider must develop and include in its security plan (which is submitted to ICE) an internal system by which its employees and Subcontractors are trained to identify and report the potential loss or compromise of sensitive PII.
2. The Service Provider must report the suspected loss or compromise of sensitive PII by its employees or Subcontractors to the ICE Security Operations Center (480-496-6627), the Contracting Officer's Representative (COR), and the Contracting Officer within one (1) hour of the initial discovery.

3. The Service Provider must provide a written report to ICE within 24 hours of the suspected loss or compromise of sensitive PII by its employees or Subcontractors. The report must contain the following information:

- a. Narrative or detailed description of the events surrounding the suspected loss or compromise of information.
- b. Date, time, and location of the incident.
- c. Type of information lost or compromised.
- d. Service Provider's assessment of the likelihood that the information was compromised or lost and the reasons behind the assessment.
- e. Names of person(s) involved, including victim, Service Provider employee/Subcontractor and any witnesses.
- f. Cause of the incident and whether the company's security plan was followed and, if not, which specific provisions were not followed.
- g. Actions that have been or will be taken to minimize damage and/or mitigate further compromise.
- h. Recommendations to prevent similar situations in the future, including whether the security plan needs to be modified in any way and whether additional training may be required.

4. The Service Provider shall provide full access and cooperation for all activities determined by the Federal Government to be required to ensure an effective incident response, including providing all requested images, log files, and event information to facilitate rapid resolution of sensitive information incidents.

5. At the Federal Government's discretion, Service Provider employees or Subcontractor employees may be identified as no longer eligible to access sensitive PII or to work on that contract based on their actions related to the loss or compromise of sensitive PII.

(6) Victim Remediation

The Service Provider is responsible for notifying victims and providing victim remediation services in the event of a loss or compromise of sensitive PII held by the Service Provider, its agents, or its Subcontractors, under this contract. Victim remediation services shall include at least 18 months of credit monitoring and, for serious or large incidents as determined by the Federal Government, call center help desk services for the individuals whose sensitive PII was lost or compromised. The Service Provider and ICE will collaborate and agree on the method and content of any notification that may be required to be sent to individuals whose sensitive PII was lost or compromised.

C. Government Records Training, Ownership, and Management

(1) Records Management Training and Compliance

(a) The Service Provider shall provide DHS basic records management training for all employees and Subcontractors that have access to sensitive PII as well as to those involved in the creation, use, dissemination and/or destruction of sensitive PII. This training will be provided at the outset of the Subcontractor's/employee's work on the contract and every year

thereafter. This training can be obtained via links on the ICE intranet site or it may be made available through other means (e.g., CD or online). The Service Provider shall maintain copies of certificates as a record of compliance and must submit an e-mail notification annually to the Contracting Officer's Representative verifying that all employees working under this contract have completed the required records management training.

(b) The Service Provider agrees to comply with Federal and Agency records management policies, including those policies associated with the safeguarding of records covered by the Privacy Act of 1974. These policies include the preservation of all records created or received regardless of format, mode of transmission, or state of completion.

(2) Records Creation, Ownership, and Disposition

(a) The Service Provider shall not create or maintain any records not specifically tied to or authorized by the contract using Federal Government IT equipment and/or Federal Government records or that contain Federal Government Agency data. The Service Provider shall certify in writing the destruction or return of all Federal Government data at the conclusion of the contract or at a time otherwise specified in the contract.

(b) Except as stated in the Performance Work Statement and, where applicable, the Service Provider's Commercial License Agreement, the Federal Government Agency owns the rights to all electronic information (electronic data, electronic information systems or electronic databases) and all supporting documentation and associated metadata created as part of this contract. All deliverables (including all data and records) under the contract are the property of the U.S. Government and are considered federal records, for which the Agency shall have unlimited rights to use, dispose of, or disclose such data contained therein. The Service Provider must deliver sufficient technical documentation with all data deliverables to permit the agency to use the data.

(c) The Service Provider shall not retain, use, sell, disseminate, or dispose of any government data/records or deliverables without the express written permission of the Contracting Officer or Contracting Officer's Representative. The Agency and its contractors are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. § 2701. Records may not be removed from the legal custody of the Agency or destroyed without regard to the provisions of the Agency records schedules.

D. Data Privacy and Oversight

Section D applies to information technology (IT) contracts. If this is not an IT contract, section D may read as self-deleting.

(1) Restrictions on Testing or Training Using Real Data Containing PII

The use of real data containing sensitive PII from any source for testing or training purposes is generally prohibited. The Service Provider shall use synthetic or de-identified real data for testing or training whenever feasible. ICE policy requires that any proposal to use of real data or de-identified data for IT system testing or training be approved by the ICE Privacy Officer and Chief Information Security Officer (CISO) in advance. In the event performance of the contract

requires or necessitates the use of real data for system-testing or training purposes, the Service Provider in coordination with the Contracting Officer or Contracting Officer's Representative and Federal Government program manager shall obtain approval from the ICE Privacy Office and CISO and complete any required documentation.

If this IT contract contains the Safeguarding of Sensitive Information (MAR 2015) and Information Technology Security and Privacy Training (MAR 2015) clauses, section D(2) of this clause is deemed self-deleting.

(2) Requirements for Service Provider IT Systems Hosting Federal Government Data

The Service Provider is required to obtain a Certification and Accreditation for any IT environment owned or controlled by the Service Provider or any Subcontractor on which Federal Government data shall reside for the purposes of IT system development, design, data migration, testing, training, maintenance, use, or disposal.

(3) Requirement to Support Privacy Compliance

(a) The Service Provider shall support the completion of the Privacy Threshold Analysis (PTA) document when it is required. PTAs are triggered by the creation, modification, upgrade, or disposition of an IT system, and must be renewed at least every three years. Upon review of the PTA, the DHS Privacy Office determines whether a Privacy Impact Assessment (PIA) and/or Privacy Act System of Records Notice (SORN), or modifications thereto, are required. The Service Provider shall provide adequate support to complete the PIA in a timely manner, and shall ensure that project management plans and schedules include the PTA, PIA, and SORN (to the extent required) as milestones. Additional information on the privacy compliance process at DHS, including PTAs, PIAs, and SORNs, is located on the DHS Privacy Office website (www.dhs.gov/privacy) under "Compliance." DHS Privacy Policy Guidance Memorandum 2008-02 sets forth when a PIA will be required at DHS, and the Privacy Impact Assessment Guidance and Template outline the requirements and format for the PIA.

(b) If the contract involves an IT system build or substantial development or changes to an IT system that may require privacy documentation, the Service Provider shall assign or procure a Privacy Lead, to be listed under "Key Personnel." The Privacy Lead shall be responsible for providing adequate support to DHS to ensure DHS can complete any required PTA, PIA, SORN, or other supporting documentation to support privacy compliance. The Privacy Lead shall work with personnel from the program office, the ICE Privacy Office, the Office of the Chief Information Officer, and the Records Management Branch to ensure that the privacy documentation is kept on schedule, that the answers to questions in the PIA are thorough and complete, and that questions asked by the ICE Privacy Office and other offices are answered in a timely fashion. The Privacy Lead:

- Must have excellent writing skills, the ability to explain technology clearly for a non-technical audience, and the ability to synthesize information from a variety of sources.
- Must have excellent verbal communication and organizational skills.
- Must have experience writing PIAs. Ideally, the candidate would have experience writing PIAs for DHS.
- Must be knowledgeable about the Privacy Act of 1974 and the E-

Government Act of 2002.

- Must be able to work well with others.

(c) If a Privacy Lead is already in place with the program office and the contract involves IT system builds or substantial changes that may require privacy documentation, the requirement for a separate Private Lead specifically assigned under this contract may be waived provided the Service Provider agrees to have the existing Privacy Lead coordinate with and support the ICE Privacy POC to ensure privacy concerns are proactively reviewed and so ICE can complete any required PTA, PIA, SORN, or other supporting documentation to support privacy compliance if required. The Service Provider shall work with personnel from the program office, the ICE Office of Information Governance and Privacy, and the Office of the Chief Information Officer to ensure that the privacy documentation is kept on schedule, that the answers to questions in any privacy documents are thorough and complete, that all records management requirements are met, and that questions asked by the ICE Privacy Office and other offices are answered in a timely fashion.

(End of Clause)