

1. **PARTIES**

The Montana Department of Corrections (**DEPARTMENT**) and Zajonc Corporation (**CONTRACTOR**) enter into this Memorandum of Understanding (**MOU – Zajonc Corp Youth PREA Audits**). The parties' names, addresses, and telephone numbers are as follows:

Montana Department of Corrections  
Quality Assurance Division  
5 S. Last Chance Gulch  
PO Box 201301  
Helena, MT 59620-1301  
(406) 444-3930

Zajonc Corporation  
PREA Auditing Services  
  
PO Box 10751  
College Station, TX 77842-0751  
(979)-696-6373

**DEPARTMENT AND CONTRACTOR, AS PARTIES TO THIS MEMORANDUM OF UNDERSTANDING AND FOR THE CONSIDERATION SET FORTH BELOW, AGREE AS FOLLOWS:**

2. **DUTIES/RESPONSIBILITIES OF DEPARTMENT AND CONTRACTOR**

WHEREAS, the Prison Rape Elimination Act (PREA) was passed in 2003 to “provide for the analysis of the incidence and effects of prison rape in Federal, State, and local institutions and to provide information, resources, recommendations and funding to protect individuals from prison rape”; and

WHEREAS, PREA and the regulations implementing PREA require that qualifying detention facilities be audited on a periodic basis to determine compliance with PREA standards;

WHEREAS, the DEPARTMENT operates three juvenile facilities (Pine Hills, Riverside Youth, and Youth Transitions) and the parties desire to enter into a contract for the provision of PREA audit services by CONTRACTOR for one facility (Youth Transitions) plus the required Department audit; and

WHEREAS, the DEPARTMENT has established a budget and provided for the purchase of such services; and

WHEREAS, the CONTRACTOR represents it is ready, willing, and able to fulfill its obligations hereunder upon execution of the contract including having a sufficient number of individuals employed or under contract as independent CONTRACTORS who are USDOJ Certified PREA auditors.

NOW, THEREFORE, in accordance with the terms and conditions set forth herein, it is further agreed between the parties as follows:

**Recitals.** Each party states that the representations it has made concerning itself in the recitals are true and correct and each hereby agrees to the incorporation of its representations as substantive terms of the contract.

**PREA Auditing Standards.** The DEPARTMENT and the CONTRACTOR shall comply with the requirements set forth in the PREA auditing standards provided in 28 C.F.R. 115.401-05 (2013), a copy of which is attached hereto and incorporated herein as **Exhibit A**.

## PREA Auditing Standards

### I. CONTRACTOR

**Designated Auditor.** There shall be one designated Auditor who shall be the responsible auditor for purposes of this Contract and the PREA Auditing standards. The name and contact information for the Designated Auditor and a copy of the Designated Auditor's current USDOJ PREA auditor certification shall be provided by the CONTRACTOR to the DEPARTMENT prior to commencement of the contracted services.

**A. Auditor Staff.** The CONTRACTOR may employ or partner with individual auditors under an independent CONTRACTOR arrangement to perform the audits required under this Agreement. The CONTRACTOR may not subcontract its obligations to a third party without prior notice to and written consent of the DEPARTMENT on such terms as the DEPARTMENT deems appropriate. Each individual employee or independent CONTRACTOR auditor present during the on-site portion of the audit shall hold and maintain USDOJ PREA auditor certification throughout the term of this Agreement. The names of individual auditors and copies of their current USDOJ PREA auditor certifications shall be provided by CONTRACTOR to the DEPARTMENT prior to the commencement of the contracted services. If any non-auditor staff members of the CONTRACTOR will be present during the on-site portion of the audits, CONTRACTOR shall first obtain criminal back ground checks on those individuals (whether employees or independent CONTRACTORS). CONTRACTOR shall not place any staff member on-site who has a felony conviction. CONTRACTOR will provide the DEPARTMENT with the non-auditor staff members' names prior to the commencement of the contracted services.

**B. Ex-Parte Communication.** The Auditor shall be permitted to initiate and receive ex parte communication with the community stakeholders, the PREA Resource Center, the U.S. Department of Justice, residents, detainees, and staff.

**C. CONTRACTOR Responsibility and Authority.** The CONTRACTOR shall have the responsibility and authority to independently observe, assess, review and report on the DEPARTMENT's implementation and compliance with the National PREA Standards. The CONTRACTOR shall spend a sufficient amount of time at each facility in order to accurately assess day-to-day operations and conditions. The CONTRACTOR shall be responsible for independently verifying representation from the DEPARTMENT regarding facility compliance. In order to accurately assess compliance at the facility, the CONTRACTOR shall:

1. Conduct an on-site inspection;
2. Observe programs and activities;
3. Interview pertinent administrators, professional staff, correctional staff, and CONTRACTORS;
4. Individually interview a random sampling of residents;
5. Review a random sampling of videotapes from housing units; and
6. Conduct detailed reviews of resident records and other pertinent documents and reports.

**D. Delivery of Contract to PRC.** Upon finalization, the CONTRACTOR shall provide a copy of this Contract to the PREA Resource Center for purposes of tracking CONTRACTOR activity.

**E. Auditing Schedule.** The CONTRACTOR shall provide the DEPARTMENT with a tentative schedule of activities during any on-site visits at least five days prior to arrival at the facility.

**Public Statements.** Except as required or authorized by the PREA auditing standards; federal, state or local law; judicial order; this Contract; or as permitted by the DEPARTMENT, the Auditor shall not make any oral or written public statements or disclosures – including, but not limited to, statements to

the press, conference presentations, lectures or articles – with regard to: the status of the DEPARTMENT’s compliance or noncompliance with the PREA standards, or any act or omission of the DEPARTMENT or its agents, representatives or employees.

- F. Testimony.** Except as required or authorized by the terms of this Contract, or by permission of the DEPARTMENT, the CONTRACTOR shall not testify in any litigation or proceeding with regard to the status of the DEPARTMENT’s compliance or noncompliance with the National PREA Standards; or any act or omission of the DEPARTMENT or its agents, representatives or employees, unless otherwise lawfully compelled to do so. If the CONTRACTOR is subpoenaed or served with lawful process purporting to compel it to provide such information, documents in any form, testimony or other materials, the CONTRACTOR shall promptly notify the DEPARTMENT and, before responding or providing the requested materials, provide The DEPARTMENT with a copy of the subpoena or lawful process. Such notification will enable the DEPARTMENT to seek a protective order if necessary in order to comply with applicable laws pertaining to juveniles in the DEPARTMENT’s care and with the Montana Constitution.
- G. Conflict of Interest.** The CONTRACTOR, its employee and independent CONTRACTOR auditors shall not accept employment or provide consulting services that would present a conflict of interest with his or her, or its responsibilities under this contract, with the PREA auditing standards, or with auditor ethical guidance provided by the PREA Resource Center or the Department of Justice, including, but not limited to, being employed or retained by the DEPARTMENT for purposes other than PREA auditing during the three year period prior to the audit, or during the three year period subsequent to the audit.
- H. Auditor Independence.** Neither the DEPARTMENT, nor any employee or agent of the DEPARTMENT, shall have any supervisory authority over the activities, reports, findings or recommendations of the CONTRACTOR or its auditor employees, independent CONTRACTORS, and staff.
- I. Audit Report Delivery.** The CONTRACTOR shall provide the audit report to the DEPARTMENT head and the facility superintendent within 30 calendar days of the conclusion of the CONTRACTOR’s on-site visit. If there are no standards requiring corrective action, the audit report shall be considered final.
- J. Corrective Action Process.** If the audit report indicates that corrective action is required, the CONTRACTOR and the DEPARTMENT shall work to promptly and jointly develop a corrective action plan toward achieving compliance with all standards. The corrective action plan shall contain a timeline for specific minimal remedial measures the DEPARTMENT shall take to achieve compliance within a 180-day corrective action period. The DEPARTMENT shall deliver, and the CONTRACTOR shall review and comment upon, deliverables provided to the auditor pursuant to the corrective action timeline. No later than 30-days after the conclusion of the 180-day corrective action period, the CONTRACTOR shall issue his or her final determination which will be contained within the final report.

## II. The DEPARTMENT

- A. Tentative Audit Timeline.** The parties tentatively agree that the initial on-site visit for the audit will occur during the following dates:

- 1. Youth Transition (to include DEPARTMENT Audit) – July 24, 2017 to July 26, 2017.**

- B. Maintenance of Documentation and Information.** Any and all of the documentation (including electronic documentation) required by the National PREA Standards shall be maintained and secured by the DEPARTMENT. The CONTRACTOR is authorized to request, review, and retain all such

documentation prior to, during and after the on-site visit. The DEPARTMENT is and continues to be the owner of the documentation and information in the CONTRACTOR's possession and, except as authorized by PREA and M-PREA, its re-dissemination by CONTRACTOR for any purpose is prohibited. **Completion of Pre-Audit Work.** The DEPARTMENT agrees to fully complete all DEPARTMENT and facility questionnaires within 28-days of the scheduled on-site visit.

- C. **Initial Auditor Review.** The DEPARTMENT assures that the DEPARTMENT's PREA Coordinator and each of the Facilities PREA Compliance Manager are available for one conference call with the Auditor within 7-days of the scheduled on-site visit.
- D. **Auditor Access.** The DEPARTMENT shall ensure that the CONTRACTOR has reasonable access to the facility, documentation (including electronically-stored information), personnel, and residents, consistent with the auditing standards, until the issuance of the final report. CONTRACTOR shall comply with all facility security procedures and policies.
- E. **Posting of Auditor Contact Information.** The DEPARTMENT shall ensure that CONTRACTOR's contact information, together with a statement of confidentiality, shall be conspicuously displayed in all resident housing units of the facility to be audited, for the six-week period prior to the on-site visit. For the purposes of this contract the facilities will ensure that the following address is utilized and posted by the date noted by [ ]:
  - 1. **For Youth Transition [Posted by June 10, 2017]**  
**Zajonc Corporation**  
**Attn: PREA Auditor-Youth Transition**  
**PO Box 10751**  
**College Station, TX 77842-0751**
- F. **External Advocacy Organizations.** The DEPARTMENT shall work in good faith to identify and provide the CONTRACTOR with contact information for community-based or victim advocates who may have insight into relevant conditions in the facility, in order to permit the CONTRACTOR to fulfill its obligations under 28 C.F.R. 115.401(0).
- G. **Access to External Investigative Personnel.** The DEPARTMENT shall make best efforts to obtain and provide to the CONTRACTOR, information and personnel from external investigative entities relevant to compliance with the National PREA Standards. If external investigative entity personnel are not local, the DEPARTMENT's obligation is to use best efforts to make such personnel available to the CONTRACTOR by phone.
- H. **Auditor Workspace and Electronics.** During any on-site visit, the DEPARTMENT shall provide the CONTRACTOR with reasonable workspace, and shall permit the CONTRACTOR to bring in a laptop computer, permit access to or be allowed to bring in a scanner, and permit internet access within that workspace.
- I. **Publication of Final Audit Reports.** The DEPARTMENT shall publish the final audit reports on the DEPARTMENT website within 14 days of receipt of the final audit reports.
- J. **Retaliation Safeguards.** The DEPARTMENT agrees that it shall not retaliate against any person because that person has provided any information or assistance to the CONTRACTOR, has filed, or will file, a complaint, or has participated in any other manner in the conduct of the Audit. The DEPARTMENT agrees that it shall timely and thoroughly investigate any allegations of retaliation in violation of National PREA Standards or this Contract and take corrective action identified through such investigations.

**K. Mandatory and Discretionary Reporting Information.** The CONTRACTOR is considered a mandatory reporter of resident abuse.

**L. Primary Points of Contact.** The DEPARTMENT shall provide the CONTRACTOR with a list of primary points of contact (PPC) with respect to staff of all relevant disciplines within the DEPARTMENT and the facility. (e.g., mental health care, investigations, and housing classification).

**M. Conflict with PREA Standards.** If any provision of this contract is found to be inconsistent with the PREA auditing standards, the auditing standards shall control.

### **3. COMPENSATION/BILLING/OUTCOMES**

The DEPARTMENT shall compensate CONTRACTOR for successful delivery of services (or goods), provided pursuant to Section 2, in the following manner:

**A.** The DEPARTMENT agrees to pay CONTRACTOR an amount not to exceed six thousand five hundred and twenty-five and 00/100 Dollars (**\$6,525.00**) for the services described herein. The DEPARTMENT is not responsible for any costs or expenses incurred by CONTRACTOR, its employees, and independent CONTRACTORS for travel, lodging, or per diem or any other purpose related to the performance of this contract.

**B. Auditor Payment Schedule:** The DEPARTMENT agrees to pay the CONTRACTOR \$6,025 upon completion of the final onsite audit. The remaining \$500.00 shall be paid to the CONTRACTOR within thirty (30) days following receipt of the Final Report and correct invoice.

**C.** The CONTRACTOR, its employees, and independent CONTRACTORS shall not accept any compensation or anything of value for the conduct of the audit not set forth in this Contract.

**D.** The DEPARTMENT may withhold payments to CONTRACTOR if CONTRACTOR has not performed in accordance with the terms of this Memorandum of Understanding.

**E.** The Memorandum of Understanding number must be referenced on all invoices and correspondence pertaining to this Memorandum of Understanding.

### **4. TIME OF PERFORMANCE**

This Memorandum of Understanding shall take effect upon final signature and shall terminate on **September 30, 2017** unless terminated earlier in accordance with the terms of this Memorandum of Understanding. This Memorandum of Understanding may, upon mutual agreement and according to the terms of the existing Memorandum of Understanding, be renewed for a period not to exceed a total of five (5) additional years.

Upon expiration of this Memorandum of Understanding, and in the absence of a new written agreement, the terms listed herein shall continue to govern the agreement between the parties until such time as a new Memorandum of Understanding is signed.

### **5. LIAISONS AND NOTICE**

**A.** Andrew Jess, 5 South Last Chance Gulch, Helena, MT 59620, 444-6583 or successor serves as DEPARTMENT liaison.

- B. Kyle Barrington, PO Box 10751, College Station, TX 77842-0751, (979)-696-6373 or successor serves as CONTRACTOR's liaison.
- C. All notices and invoices required in this Memorandum of Understanding shall be in writing, properly addressed to the liaison in (A) and (B) above, and mailed first-class, postage prepaid. All notices sent via U.S. Postal Service are deemed effective on the date of postmark. Notices and invoices mailed through another carrier (e.g., UPS or FedEx) are effective upon receipt.

**6. AMENDMENTS**

All amendments to this Memorandum of Understanding shall be in writing and signed by the parties.

**7. TERMINATION AND DEFAULT**

- A. The DEPARTMENT may, by written notice to CONTRACTOR, terminate this Memorandum of Understanding in whole or in part at any time CONTRACTOR fails to perform as required in this Memorandum of Understanding.
- B. The CONTRACTOR may be terminated if the DEPARTMENT and the U.S. Department of Justice agree and upon good cause shown. Good cause shall include, among other things, violation of the terms of this Agreement, any violation of the PREA Standards; or federal, state, or local law, or other conduct on-site or in the community which reasonably calls into question the auditor's fitness to continue serving as the Auditor.

**8. INTEGRATION**

This Memorandum of Understanding contains the entire agreement between the parties and no statement, promises, or inducements made by either party or agents thereof, which are not contained in the written Memorandum of Understanding, shall be binding or valid. This Memorandum of Understanding shall not be enlarged, modified, or altered except upon written agreement signed by all parties to the Memorandum of Understanding.

**9. HOLD HARMLESS/INDEMNIFICATION**

CONTRACTOR agrees to protect, defend, indemnify, and hold harmless the Department, its elected and appointed officials, agents and employees from and against all legal, equitable or administrative claims, causes of action, damages, losses and expenses, of any kind or character, including but not limited to attorneys' fees and the costs of defense, arising in favor of CONTRACTOR's employees or third parties on account of bodily injury, sickness, disease, death, personal injury, violation of an offender's constitutional or statutory rights, or to injury to or destruction of tangible property except for such claims, causes of action, damages, losses or expenses which are solely due to the fault or negligence of the party seeking indemnity.

**10 COMPLIANCE WITH LAWS**

CONTRACTOR shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. CONTRACTOR is the employer for the purpose of providing healthcare

benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by CONTRACTOR subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 CONTRACTOR agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

The Affordable Care Act requires a CONTRACTOR, if CONTRACTOR is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980 H (ACA) if provided by the State.

**Additional Indemnification.** Claims under this provision also include those arising out of or in any way connected with CONTRACTOR's breach of this contract, including any Claims asserting that any of CONTRACTOR's employees are actually employees or common law employees of the State or any of its agencies, including but not limited to, excise taxes or penalties imposed on the State under the Code §§ 4980H, 6055 or 6056.

**Reporting Requirements.** CONTRACTOR, if CONTRACTOR is an applicable large employer under the ACA, further states that it shall satisfy all reporting requirements under the Code §§ 6055 and 6056 (ACA) with respect to individuals who perform services for the State.

**Auditing.** The State may audit CONTRACTOR's operations to ensure that the CONTRACTOR has complied with the statements made above.

## 11. SEVERABILITY

A declaration by any court, or any other binding legal source, that any provision of this Memorandum of Understanding is illegal and void shall not affect the legality and enforceability of any other provision of this Memorandum of Understanding, unless the provisions are mutually dependent.

## 12. COMPLETED MEMORANDUM OF UNDERSTANDING

The DEPARTMENT cannot disburse any payments under this Memorandum of Understanding until a fully executed original Memorandum of Understanding is returned to the Department of Corrections, Contracts Management Bureau, PO Box 201301, Helena, MT 59620-1301.

**SIGNATURE**

**DEPARTMENT**

*Loraine Wodnik*

Loraine Wodnik, Interim Director  
Montana Department of Corrections

**CONTRACTOR**

*Kyle Barrington*

Kyle D. Barrington, PREA Auditor  
Zajonc Corporation

*5-23-17*

Date

May 10, 2017

Date

Approved for Legal Content by:

*Colleen Ambrose*

Legal Counsel  
Department of Corrections

*5-19-17*

Date