

## **CHILD PLACING AGENCY CONTRACT**

**Contract #** \_\_\_\_\_

This Contract (“Contract”), entered into by and between the Indiana Department of Child Services, (“DCS” or “the State”), and \_\_\_\_\_, an Indiana licensed child placing agency (the “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

### **1. Duties of Contractor.**

#### **A. Purpose.**

- (1) DCS and the Contractor are entering into this Contract for the purpose of establishing the duties, terms, and conditions to which the Contractor will provide services to DCS or a probation department for a child in a foster home for temporary care and treatment in accordance with an individual child placement referral, individual case plan, and treatment plan (the “Scope of the Contract”). This Contract shall also apply to children placed with the Contractor for services pursuant to terms and conditions specified by DCS in a voluntary placement agreement described in IC § 31-34-1-16(b).
- (2) The parties acknowledge that DCS Practice Model focuses on values, skills (including teaming, engaging, assessing, planning, intervening (“TEAPI”), and trust-based relationships. The parties also acknowledge DCS’ vision promotes that Indiana children will live in safe, healthy, and supportive families and communities.
- (3) This Contract may also be utilized by the Indiana Department of Correction (“DOC”) for the placement of youth adjudicated delinquent and being placed by DOC.

#### **B. Definitions.** For the purposes of this Contract and in conjunction with DCS Child Placing Agency Provider Manual and DCS Child Welfare Policy (available at <http://www.in.gov/dcs/2334.htm> and <http://www.in.gov/dcs/2354.htm> respectively, or successor links), the definitions in 465 IAC 2-17 shall control. The following terms used in the Contract are defined:

- (1) **Child** (“Child” or “Children”) means a DCS ward, a youth involved in the Children’s Mental Health Initiative, a probation youth, or a youth in Collaborative Care (pursuant to IC § 31-28-5.8) who has been placed with the Contractor under this Contract.
- (2) **Child and Adolescent Needs and Strengths Assessment** (“CANS”) has the meaning set forth in DCS Child Welfare Policy 5:19.
- (3) **Child and Family Team** (“CFT”) means the team assembled pursuant to DCS Child Welfare Policy 5:7, as amended from time to time, to facilitate plans for assessment, safety, service delivery and permanency.
- (4) **Child Placing Agency** ("CPA") has the meaning set forth in IC § 31-9-2-17.5.
- (5) **Children’s Mental Health Initiative** (“CMHI”) is a voluntary service having the objectives, eligibility requirements, and access as set out at <https://www.in.gov/dcs/3401.htm> or successor link.
- (6) **Community Mental Health Center(s)** (“CMHC”), pursuant to 440 IAC 4.1-1-1(4), means a mental health facility which the division has certified as fulfilling the statutory

and regulatory requirements to be a community mental health center.” Under 440 IAC 4.1-3-2(a), “Each community mental health center (CMHC) is obligated to provide accessible services for all individuals, within the limits of its capacity, in its exclusive geographic primary service area.”

(7) **DCS CPA Provider Manual** (“Provider Manual”) means the most current version of the DCS Child Placing Agency Provider Manual published by DCS that more fully explains the rate setting process described in 465 IAC 2-17 and provides additional guidance for the Contractor. Provider Bulletins will be released to update the Provider Manual from time to time.

(8) **DCS Service Standards** (the “Service Standard” or “Service Standards”) means the most current version of DCS Service Standards applicable to the Services provided by the Contractor for DCS. The Services Standards are available in their most current form at the following link(s) (or any designated subsequent link pursuant to this Contract, as such Service Standards are modified/updated from time to time by successor website): <https://www.in.gov/dcs/3320.htm> and <https://www.in.gov/dcs/placement/>. These Service Standards are incorporated by reference into this Contract. The Contractor shall abide by all Service Standards related to this Contract for a Child referred to Contractor.

(9) **Enhanced Supervision** (“Enhanced Supervision”) has the meaning set forth in 465 IAC 2-17-9.

(10) **Individual Case Plan** (“Case Plan”) means the Case Plan required under IC § 31-34-15 for a DCS ward, IC § 31-37-22-4.5 for probation youth and IC § 31-28-5.8-6 for Collaborative Care youth.

(11) **Individual Child Placement Referral** (“ICPR”) means the Child-specific placement referral that details the applicable service category related to services to be rendered by the Contractor per the Contractor’s established and approved rates in Attachment 1 to this Contract, which is attached hereto and incorporated herein. Pursuant to 465 IAC 2-17-20, 21, new rates established annually or pursuant to rule or the administrative review/appeal process shall amend this Contract; and the most current Attachment 1 will control.

(12) **Informal Adjustment** (“IA”), as set out in DCS Child Welfare Policy 5:09, is a written agreement that is filed with the court, which outlines the steps the parent, guardian, or custodian must complete to ensure the safety and well-being of the child. An IA may be offered to a family to provide the parent, guardian, or custodian with an opportunity to keep the child safe in the home when there is probable cause to believe Child Abuse and/or Neglect (“CA/N”) exists.

(13) **Initial Clothing Allotment** means the dollar amount that is to be paid to the Contractor for use by the foster parent when the Child is initially removed from his/her home and placed with the Contractor up to the maximum allowed under DCS Child Welfare Policy at the time of Child’s placement.

(14) **Individual Education Program** (“IEP”) means a plan for educational support services and outcomes developed for students enrolled in special education programs.

(15) **Juvenile Delinquent/Juvenile Status** (“JD/JS”) has the meaning set forth in IC § 31-37-1, IC § 31-37-2-1, and/ or IC § 31-41-1-2.

- (16) **Permanency Plan** (“Permanency Plan”) has the meaning set forth in DCS Child Welfare Policy 6:10.
- (17) **Placing Agency** (“Placing Agency”) means either DCS or a probation department when the agency has primary responsibility for the out-of-home placement, care, and supervision of a Child placed with the Contractor.
- (18) **Treatment Plan or Treatment Plans** (“Treatment Plan(s)”) means goal-oriented, time-limited, individualized program of action for a Child, developed by the Contractor in cooperation with the Placing Agency.

### **C. Administrative Duties of Contractor.**

- (1) **Categories of Service.** The per diem paid to the Contractor, and more fully described in Section 2 [Consideration] of this Contract, is based on categories of foster care that the Contractor provides for the placement of a Child. These categories are set forth on Attachment 1 as an example of the categories in place at the time the Contractor signs this Contract. The category of supervision required for each individual Child placed with the Contractor through the Placing Agency will be stated in an ICPR sent by the Placing Agency to the Contractor at the time the Child is placed with the Contractor, a sample ICPR is attached hereto as Attachment 2 and incorporated herein. The Contractor may request a review of the category of supervision as outlined in 465 IAC 2-17-30 and 31. The then-current version of Attachment 1 will control. Counseling or therapy services per subsection 1.E. herein may be billed under this Contract only pursuant to a referral separate from the ICPR.
- (2) **Compliance with Administrative Rules.** The Contractor warrants and represents that it has read and understands the Administrative Rules adopted by DCS, and found at 465 IAC 2, and that Contractor’s compliance with the Rules is a material term of this Contract.
- (3) **Compliance with DCS non-rule Policies.** The Contractor acknowledges that DCS and the Contractor need to apply consistent standards with respect to Child placements, and Contractor agrees to abide by all DCS policies. DCS will provide written notice to the Contractor of any new policies, or changes in current policies that have been made by DCS, by including such notice on its website at <http://www.in.gov/dcs/> (or successor link); and Contractor shall abide by such policies.
- (4) **Adherence to the Case Plan.** The program and services that the Contractor provides to a Child under this Contract and the ICPR must be consistent with all the terms and provisions of any Case Plan prepared for the Child, or any other written Case Plan for the Child that is in effect at the time of placement, and any modifications to the Case Plan that are made while the Child is placed with the Contractor. Contractor shall support the activities of the Placing Agency in the achievement of safety, permanency and well-being objectives as outlined in the Case Plan. Contractor shall work in conjunction with the assigned DCS family case manager (“FCM”) or probation officer in the planning of treatment, service delivery, and family visits.
- (5) **Availability of Services.** Services, including crisis or emergency support services, shall be available and provided twenty-four (24) hours per day, seven (7) days per week, including holidays, in the Contractor’s licensed foster homes for the duration of the Contract. Contractor shall have a method in place for accepting referrals for emergency

after-hours placements and shall provide that method to DCS to ensure Contractor responds to DCS within one (1) hour of receipt of the DCS communication regarding emergency after-hour placements.

(6) Outcome Measures. The Contractor agrees to prepare and submit to the State, as requested, the information required by the State for reports and evaluations necessary to monitor services or programs and outcomes. The Contractor will provide all information requested by the State (in the format requested by the State) and will cooperate with and assist the State in preparing such reports and evaluations. DCS will attempt to standardize the timing and content of required reports to the extent it can.

(7) Preparation for Placement. If the placement occurs before the time the approved assessment tool is completed, the rate that is determined when the approved assessment tool is completed will be retroactive to the first day of placement. Within seven (7) business days of the placement, the Contractor shall prepare a Treatment Plan that is consistent with the Child's ICPR and current Case Plan. The Treatment Plan shall address the primary reasons for placement as well as a method for achieving the Child's Permanency Plan. The Contractor shall ensure that its staff, the Child him/herself, and any significant family member(s) and/or significant individual(s), are actively involved in the treatment planning process. The Contractor shall update the Treatment Plan every ninety (90) days.

(8) Discharge Plans. The Contractor must have a written discharge plan for the Child. This can be part of the Treatment Plan.

(9) Recruitment of Foster Homes. The Contractor shall have a plan in place to evaluate the needs of the community or communities the Contractor serves and ensure that the agency's recruitment efforts are consistent with those needs. Evaluation of the needs of the community may include, but is not limited to, a review of demographic information provided by DCS and coordination with the appropriate Regional Services Council(s).

(10) Review of Foster Homes. If a foster home supervised by Contractor is not utilized for a ninety (90) day period prior to a placement, the Contractor will:

- (a) prior to a placement, verbally confirm with the foster parent that no significant changes have occurred within the foster home; and
- (b) within 48 hours of the placement, conduct a home visit of the foster home to ensure that no significant changes have occurred.

(11) Electronic Case Management. The Contractor shall utilize DCS' electronic case management system, Management Gateway for Indiana's Kids ("MaGIK") (or a successor case management system), for recording all pertinent information about the foster family, (e.g., household members, preferences, uploading documents) and transmitting information necessary for the licensing of foster family homes. The Contractor shall keep the information in MaGIK updated as necessary for case management and outcome measures as requested by DCS and further explained in the Provider Manual.

(12) Uploading Contractor's Agency Documentation. The Contractor shall upload applicable licensure documentation into DCS' appropriate electronic information management system and ensure said information remains current.

(13) **Caseworker Caseloads.** Contractor shall adhere to the caseworker to child ratio set out in 465 IAC 2-2-5(b). When a caseworker's caseload includes children requiring enhanced supervision, the Contractor shall ensure services provided under this Contract are performed in accordance with the LCPA Guidelines for Blended and Enhanced Caseloads, available at <https://www.in.gov/dcs/placement> or successor link.

**D. Responsibilities for a Child in Foster Care:**

(1) **Quality of Foster Care.**

(a) **Training:** The Contractor will ensure that each foster parent it recommends for licensure will be appropriately trained as DCS requires, consistent with the approved pre-service curriculum. Pursuant to DCS Child Welfare Policy 12, which governs the licensing of foster homes, the Contractor shall utilize the state-approved foster family home licensing study. For in-service training and any pre-service training offered in addition to what is required by DCS for therapeutic certificate homes, only training that has a documented curriculum, adequately qualified trainers and is relevant to the care of children will be credited toward the training requirements.

(b) **Home Capacity:** The number of children served on a daily basis shall not exceed the capacity of the foster home, as specified in the applicable license. The Contractor will adequately monitor its licensed foster parents to ensure quality of care. This must include periodic face-to-face contact with both foster children and foster parents as described in subsection 1.D.(3) herein.

(2) **Staffing.** The Contractor agrees that it will hire staff, subcontract, or lease employees as necessary to deliver the services available under this Contract. The Contractor agrees that all expectations in this Contract apply equally to the Contractor's staff whether they are regular employees, leased employees, or subcontractors. The Contractor shall ensure staff can effectively perform the roles and responsibilities associated with their positions and ensure that staff are appropriately trained and maintain population-specific competencies.

Staff performing the duties of licensing foster homes shall have, at a minimum, a bachelor's degree from an accredited school in social work, counseling, or a related human service area of study. Experience may substitute for a bachelor's degree which will be considered by DCS on a case-by-case basis. A request for a waiver must be submitted to the Contractor's DCS Licensed Child Placing Agency ("LCPA") Licensing Specialist and must comply with IC § 31-27-2-8.

Staff performing case management duties shall meet the personnel qualifications of "case worker" in 465 IAC 2-2-6.

(3) **Case Management Contacts with Foster Home and Child.** Contractor is required to have ongoing meaningful visits with the foster Child to ensure their needs are being met in the areas of safety, stability, well-being (including health and medical status) and permanency and ongoing meaningful visits with the foster parent(s) to provide appropriate support, supervision and opportunities to enhance their ability to meet the unique needs of each Child in their care. Minimum levels of ongoing meaningful visits are defined below and should be appropriately documented with specificity in the Child's case file:

- (a) Maintenance Payments only. If the Contractor is receiving a maintenance payment with no Enhanced Supervision payment, the Contractor shall ensure one visit with the Child at the foster home monthly and weekly telephone contact with the foster parent(s).
- (b) Enhanced Supervision. If the Contractor is receiving an Enhanced Supervision payment, the Contractor shall ensure the following minimum:
  - (i) Enhanced Supervision category Foster Care with Services: visits at least every other week with the Child and with the foster parents, with at least every other one being in the foster home;
  - (ii) Enhanced Supervision category Therapeutic: at least weekly visits with the Child and with the foster parents, with at least every other visit being in the foster home;
  - (iii) Enhanced Supervision category Therapeutic Plus: visits at least twice a week with the Child, with at least every other visit being in the foster home, and a weekly visit with the foster parent(s).

(4) Healthcare – Physical Needs.

- (a) For the purposes of the routine and emergency medical care referenced in the ICPR, DCS' signature on this Contract shall serve as its consent to such care.
- (b) In addition to its obligations for physical and dental examinations set forth in 465 IAC 2-2-11, the Contractor will ensure that at least one (1) exam per year per Child consists of early and periodic screening, diagnosis, and treatment (“EPSDT”) services, as required by 465 IAC 2-1.5-19. The Contractor shall coordinate with the Placing Agency to determine the necessity of scheduling EPSDT services. The Contractor will ensure the Child’s medical passport is updated as needed for DCS’ wards.
- (c) The Contractor shall comply with all applicable laws and rules and DCS policies, including specifically 465 IAC 2-1.5 and 465 IAC 2-2, and the notice and consent requirements and other considerations described therein regarding medical care (see specifically Child Welfare Policies 8.25 through 8.36) and parameters on discipline (see DCS Child Welfare Policy 8:18) and all related laws, including limitations on use of physical restraints or seclusions in the Children’s Health Act of 2000 (42 U.S.C. § 290jj *et. seq.*) Contractor agrees to cooperate with DCS in ensuring compliance with the *Psychotropic Medication Guidelines for Youth in Care of Indiana Department of Child Services*, available at <https://www.in.gov/dcs/3635.htm>, or successor link. Parties acknowledge that a set of mutually acceptable consent/release/authorization forms has been developed and that Contractor and DCS will use these standard forms. The DCS policies are found at [www.in.gov/dcs](http://www.in.gov/dcs) (or successor link).
- (d) The Placing Agency will advise the Contractor at the time of placement or as soon as possible (depending on when the information is available from Medicaid) if the Child is eligible for Indiana Medicaid coverage and will provide the Child’s Medicaid number. The ICPR will include the Child’s Medicaid number if it is available.

(e) With respect to medical care for the Child's physical needs, if the Child is eligible for Medicaid, the Contractor will determine whether the Child's services are eligible for Medicaid coverage under any applicable provision of the Indiana Medicaid state plan or under any available Medicaid waiver. If the services for the Child's physical needs are eligible or available under any Medicaid waiver and if the Contractor is enrolled as a Medicaid provider, the Contractor will request Medicaid authorization for coverage of the Child's treatment program or services and will timely provide all documentation and information that is within its control and necessary to pursue Medicaid or waiver reimbursement, including appeals of denials. The Placing Agency will provide any needed assistance and documentation to facilitate Medicaid authorization and coverage. Except as provided herein, if the Child is Medicaid eligible and the Contractor does not provide the required service for the Child's physical needs, the Contractor will seek and use a Medicaid-eligible or waiver service provider. If such a provider is not available or appropriate, the Contractor must seek prior approval from DCS for use of any such non-Medicaid providers unless an emergency situation occurs. The Contractor will, at all times, coordinate with the Placing Agency to manage Child's medical care.

(5) Visits with Family. The Contractor shall be responsible for ensuring that transportation is provided for visitation with the Child's family members or other primary caregivers, as required by the Placing Agency and in accordance with the Child's ICPR, at times that accommodate the reasonable needs of the Child's family members or other primary caregivers. This does not include supervising the visit. A separate referral will be issued if DCS wishes the Contractor's staff to supervise visits. The Placing Agency and Contractor shall work together at the time of the referral to assess the Child's transportation needs and identify reasonable methods to accomplish them.

(a) Except as otherwise provided in this Contract, all expenses for travel (including transportation, mileage, per diem, and any other incidental expenses) of the Contractor or any of its employees, in relation to provision or performance of any services described in this Contract, are included in the service rates described in Section 2 of this Contract.

(b) Expenditures made by the Contractor for additional travel as described in Section 2 and in Section 47 will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures and the Provider Manual.

(6) Educational Stability and Provision. The Contractor shall, in collaboration with DCS, ensure that a Child will remain enrolled in their school of origin (the Child's school of enrollment at the time of placement change) unless it is determined that it is not in the Child's best interest, according to the educational stability requirements for students in foster care and the Every Student Succeeds Act ("ESSA") Point of Contact ("POC") Collaboration process (ESSA, P.L. 114-95; IC § 31-34-3-4.7-; DCS Child Welfare Policy 8.22). If remaining in the school of origin is not determined to be in the Child's best interest, the Contractor shall coordinate with DCS to ensure immediate enrollment of the Child in the school or education program deemed appropriate to meet the educational needs of the Child, including arrangements for the transfer of the Child's relevant education records from the school of origin to the new school pursuant to IC § 20-33-2-10. Unless an exception is permitted or required by the Child's Case Plan, or is approved by the applicable DCS Regional Manager and the court and is necessary for the Child's particular needs, the Child's education shall be provided in an accredited education

program recognized by the Indiana Department of Education with transferrable credit towards Indiana high school diploma requirements, as set out by the State Board of Education Graduation Pathways Policy available at <https://www.in.gov/sboe/> or <https://www.in.gov/doe/students/graduation-pathways/> or successor policy and/or website, and as determined to be in the Child's best interests through the ESSA POC Collaboration process detailed in DCS Child Welfare Policy 8.20.

(7) **Extracurricular Activities.** For the purpose of promoting normalcy for the Child and pursuant to IC §§ 31-27-4-20.5 and 31-27-6-14.5, the Contractor and Foster Parent shall utilize the reasonable and prudent parent standard when determining whether a Child will participate in extracurricular, enrichment, cultural and social activities. The Contractor shall ensure that the Child participates in extracurricular activities as appropriate to the needs, desires, and capabilities of the Child. The Contractor shall use its best efforts to ensure that the Child maintains connections with schools, churches, friends, families, and the communities relevant to the Child, as deemed appropriate by the Placing Agency in collaboration with the Contractor. Contractor shall make community resources available to the Child and encourage participation and involvement in community-based programming, as appropriate, to ensure that the Child develops skills for living successfully in the community. Examples of such resources that Contractor shall make available to the Child include but are not limited to: opportunities to participate in volunteer civic activities, use of public agencies/services, promotion of positive peer influences, and participation in recreational activities at local gyms or community centers.

(8) **Progress Reports.** The Contractor will ensure that a progress report relating to the Child's current Case Plan and Treatment Plan will be uploaded to the appropriate electronic record system by the 10<sup>th</sup> of each month. The Contractor will use any standard report form(s) required by DCS with relevant assessments, evaluations, or other updates attached as necessary. Each progress report shall specifically address the following:

- (a) Progress toward Permanency Plan goals;
- (b) Services provided, including behavioral health services if provided by Contractor;
- (c) Treatment Plan goals and accomplishments;
- (d) Current needs of the Child;
- (e) Plans to meet identified needs of the Child;
- (f) Projected discharge date; and
- (g) Any other information requested by the Placing Agency as it relates to the Child and family's progress.

The Contractor shall make available appropriate Title IV-E case management staff for the preparation of all progress reports, discussion of the reports with staff of the Placing Agency, and, to the extent appropriate, discussions with the Child's parent(s), guardian, legal custodian and other members of the CFT.

(9) **Legal Appearances.**

(a) Legal Appearances.

(i) The Contractor agrees that the services provided under this Contract may require the Contractor and/or subcontractors to appear in court or appeals hearings, as well as in miscellaneous administrative hearings and/or require its participation in deposition(s) (hereinafter referred to as "Appearance(s)" or "Appear(s)"). Due to the nature of services, the parties acknowledge that any such Appearances may be long after the service referral has closed. However, the Contractor's obligation to testify shall survive both the closure of the referral for services and the Contract. As part of these services, the Contractor shall:

- Require Appearance(s) of its employees, former employees (if applicable), lease employees, and subcontractors (the "Contractor's Staff") as required by DCS whether or not a subpoena or written request (including email) is sent. The Contractor shall make available at least one (1) Title IV-E case management staff person who is knowledgeable about the Child's progress as needed for appearances at court hearings to present progress reports and prognosis of treatment, and to answer questions concerning the Child who is the subject of the hearings.
- Immediately contact DCS regarding subpoenas/correspondence received, including notification of any correspondence addressed to a former employee, leased employee, or subcontractor relating to or arising from the services provided under this Contract;
- Provide contact information for those subpoenaed, if available;
- Provide a substitute witness as requested by DCS;
- Timely copy and provide records and documentation; and
- Arrange for documentation of chain of custody on tests administered to clients as part of the Contractor's services, if requested by DCS.

(ii) DCS will attempt to provide adequate prior notice for required court/hearing testimony and/or deposition(s) and will pay for Appearances it requires and for which the Contractor's Staff appears (in accordance with the specifications set forth below).

(iii) Releases: Where the DCS deems applicable, the Contractor shall have current releases for all DCS' clients and JD/JS clients for whom the Contractor provides or has provided services pursuant to this Contract. It is the Contractor's responsibility to obtain the signature of the appropriate parent and/or guardian of the DCS client or JD/JS client on the release. These releases shall enable the DCS and the courts/judges (the "Courts") associated with referred DCS cases to obtain information regarding the services being provided by the Contractor in order to allow DCS and the Courts to monitor progress in services. The terms and

content of the release shall be legally sufficient to allow Contractor and subcontractors to provide the testimony described above and to turnover any other documents, material, or other information to DCS as required by the Contract.

- The release must be signed by the appropriate parent and/or guardian of the DCS client. If a parent and/or guardian is not reasonably available, declines to act, and/or existence is unknown, the Contractor shall immediately notify DCS so a court order can be obtained.
- The release will have an expiration tied to closure of the relevant CHINS case or JD/JS case. If a case begins as an IA or CMHI, the expiration will be tied to a reasonable expiration date to cover the later of potential appearance requests or the closure of any successor CHINS case. It is the Contractor's responsibility to monitor the expiration dates of the releases and obtain subsequent, signed releases for all DCS' clients and JD/JS clients throughout the entire CHINS case or JD/JS case.
- If the Contractor is planning on filing a motion to quash or requesting any hearings relating to its testimony that must take place prior to a court/trial date, the Contractor must provide DCS and any relevant counsel for JD/JS clients with adequate advance notice of such motion and/or request for a hearing prior to such court/trial date. DCS shall determine, in its discretion, whether such advance notice is adequate in any given circumstance. Notice will be considered inadequate if it would require a delay in any fact finding or other hearing.

(iv) Payment for Appearances/Testimony Rendered for DCS that Results from a Referral Pursuant to this Contract. No additional payments will be made for travel to court appearances or the time spent at court appearances. The Contractor may fulfill this obligation by alternatives to in-person appearances, including appearances by telephone, videoconference, any other technological means, or business records affidavits, as allowed by the court and approved by DCS.

(v) The Contractor agrees to cooperate with the DCS local office attorney (or other authorized representative of DCS) during case preparation. Furthermore, the Contractor shall be prepared for all Appearances/testimony. DCS will endeavor to schedule Appearances to accommodate the Contractor's Staff to the extent permissible by the court or otherwise.

(vi) Should the Contractor's Staff be requested by DCS to provide testimony unrelated to services rendered pursuant to this Contract, payment for such testimony will be separately negotiated and paid.

(vii) The court time payment component described above will be available for testimony regarding parent services even if the parent(s) is/are eligible for Medicaid and/or third party insurance and the services the parent(s)

is/are receiving are reimbursable by Medicaid and/or third party insurance.

(b) Older youth, Child(ren) fourteen (14) years of age or older, are entitled to participate in their Case Plan or transitional services plan, pursuant to IC § 31-34-15-7, and to consult on their Permanency Plan pursuant to IC § 31-34-21-7. Contractor shall support older youth throughout this process and provide transportation to and from court for the Child(ren) as required by the court.

(10) Transfers of Child. Excluding any time periods scheduled for planned respite and in response to an emergency situation where the Child is in need of respite (as defined by DCS Child Welfare Policy), the Contractor may transfer any Child to a different licensed foster home for a period of up to twenty-four (24) hours; or if during a weekend or holiday, until the start of the next State business day. Such transfers shall be at no additional cost to DCS. The Contractor shall notify the Placing Agency as soon as possible of the emergency situation. The Contractor shall attempt to locate a home as similar to the current foster home as possible that can meet the needs of the Child. DCS shall be notified prior to the emergency respite, if at all possible, but at least within four (4) hours. For planned and emergency respite, the Contractor is responsible for locating an appropriate respite home. For planned respite, the Contractor shall ensure: (a) the involved respite caregiving foster parent(s) is/are: (a) informed of all needed information concerning the Child(ren) involved; (b) capable of providing the level of supervision required for the Child(ren); and (c) paid for the provision of respite care. Contractor may make a request of the Placing Agency for a referral for services to support the foster family and prevent disruption of the Child's placement.

If the Contractor determines that the Child can no longer be served in the Contractor's licensed foster home, the Contractor must notify and request approval of the Placing Agency prior to moving the Child. This includes moves between foster homes licensed by the Contractor. When seeking Placing Agency approval, the Contractor must present evidence that the Contractor's staff used all avenues to preserve the placement in the program. The Contractor shall give thirty (30) days' notice whenever possible to allow the Placing Agency adequate time to find an appropriate placement.

As youth transition to different agencies or providers, the Contractor shall consult with the receiving agency or Placing Agency to promote a successful transition for the Child and to maintain continuity of the specialized services and care unique to the Child.

(11) Family Reunification Services. In accordance with the ICPR and the current Case Plan, and in preparation of a Permanency Plan, services shall be provided to the Child to prepare the Child and the CFT for the return of the Child to the family home, unless the court has determined that reasonable efforts toward family reunification are not required. The Contractor shall assist with preparing the Child according to the Permanency Plan, whether or not reunification is the Plan's goal.

(12) Cultural and Religious Competence. The Contractor shall respect the culture of the Children placed in its care, make every attempt to support the Child's culture, and provide opportunities, if applicable, for the Child to participate in activities related to his/her cultural heritage. The Contractor shall not prohibit the Child's participation in the Child's religious faith nor prohibit related religious activities. The Contractor shall ensure that every Child has an opportunity to participate in religious services of his/her choice, or to refrain from religious practice if so desired. All staff persons who come in contact with the Child must be aware of and sensitive to the Child's cultural, ethnic, and

linguistic differences. All staff also must be aware of and sensitive to the sexual and/or gender orientation of the Child, including lesbian, gay, bisexual, transgender or questioning children/youth. Efforts must be made to employ or have access to staff and/or volunteers who are representative of the community served in order to minimize any barriers that may exist. The Contractor must have a plan for developing and maintaining the cultural competence of their programs, including the recruitment, development, and training of staff, volunteers, and others as appropriate to the program or service type; treatment approaches and models; and the use of appropriate community resources and informal networks that support cultural connections.

(13) **Reporting Incidents.** The Contractor shall report to the Placing Agency within twenty-four (24) hours any issue concerning a Child placed with the foster parents that impacts his or her health, case or Permanency Plan progression, welfare, or general well-being. Such reports shall be available to DCS at annual reviews.

**E. Responsibilities for Behavioral Health Services.**

(1) DCS will refer behavioral health services for the Child based on the Child's assessed needs. If it is in the Child's best interest and DCS wishes the Contractor to provide the behavioral health services, DCS will separately refer those services to the Contractor, as specified in 465 IAC 2-17-25. Inclusion of behavioral health services as part of the Contractor's responsibilities should be discussed with the DCS FCM before completion of the ICPR. The behavioral health services must be provided pursuant to a CMHC or Child Welfare Service contract with DCS or pursuant to this Contract if the applicable behavioral health service is identified in Attachment 1 and the referral is to the Contractor. Any behavioral health services provided by the Contractor shall be provided in accordance with the most current version of the DCS Service Standards applicable at the time services are rendered. The parties anticipate that Contractor's approved array of behavioral health services may change over time as DCS' needs shift and new needs may arise, therefore any changes to the array of behavioral health services within the Scope of the Contract (and their accompanying rates) may be accomplished by written notice from the State to the Contractor as detailed in Section 31 [Merger & Modification] herein.

As applicable, DCS shall refer therapy to the CPA as part of the placement for children in therapeutic and therapeutic plus categories, unless it is in the Child's best interest to be referred to a different behavioral health provider. If it is in the Child's best interest to be referred to a different behavioral health provider, DCS will develop a transition plan in consultation with the CPA.

Contractor must also keep case records for behavioral health services that document, in detail, what services are being performed, dates performed, and by whom. This should include a start and stop time on the case note.

(2) DCS will pay behavioral health service providers for treatment as provided in 465 IAC 2-17-25.

(3) If a CMHC is providing treatment to the Child placed with the Contractor or to the Child's family, the Contractor and CMHC will coordinate on treatment to avoid duplication of services and to ensure consistency of Treatment Plans (e.g., on clinic option services, a joint Treatment Plan is recommended to avoid audit problems).

**F. Older Youth Services.**

Contractor shall comply with the relevant DCS OYS Service Standard current at the time of service delivery and shall address the full array of OYS and skills described therein. These OYS Service Standards are hereby incorporated by reference and are available in their most current form at: <https://www.in.gov/dcs/OlderYouthInitiatives.htm>; or a successor link on the DCS website.

Older Youth Services education in foster homes should start the day the youth/Child moves into the home, not waiting until the Child reaches age sixteen (16). The Contractor shall assist foster parents in documenting OYS for youth aged sixteen (16) and over. Contractor is required to include this documentation in the monthly report submitted via the National Youth in Transition Database (“NYTD”) portal.

## **G. General Obligations of the Contractor.**

- (1) **Responsibility for Staff and Foster Parents.** In the event of DCS’ receipt of a report (verbal or written) of criminal or potentially criminal activity by a member of the Contractor’s staff (including any of the Contractor’s subcontractors and their staff) or a foster parent that the Contractor supervises, that potentially threatens/endangers the life, health, or safety of any Child, DCS may immediately require a temporary suspension of such member of the Contractor’s staff (including any of the Contractor’s subcontractors and their staff) or appropriate safety measures regarding foster parent(s) pending an investigation into the report.
- (2) **Voluntary Placement Agreements.** In the unusual case of any Child that is placed with the Contractor for foster care services pursuant to a voluntary placement agreement (“VPA”) entered into under IC § 31-34-1-16(b) among the Contractor, a Placing Agency, and the Child’s parent(s), guardian, or custodian, the provisions of this Contract and the ICPR shall apply to all services provided in accordance with the VPA for which DCS makes any payment, to the extent the provisions of this Contract and the ICPR are not in conflict or inconsistent with the terms and provisions of the VPA.

### **(3) Transfer of Foster Home Licenses.**

- (a) If a Child is placed under the terms of this Contract with an ICPR in effect, and the Child’s foster family requests that the family’s license be transferred to another contractor which is a licensed CPA, the following conditions apply:

All transfers must be approved by DCS and conducted in a manner that protects and maintains the continuity of the specialized services and care unique to the Child. In order for the transfer to occur, the Placing Agency must agree that this transfer is in the Child’s best interest. If multiple Children are involved from multiple placing agencies, all placing agencies must agree to the transfer.

- (b) The license may only transfer under subparagraph (a) above if the foster family is in good standing with DCS (i.e., no corrective or disciplinary actions), is in full compliance with licensing regulations, and has given the Contractor holding the effective ICPR for the Child(ren) appropriate notice of the foster family’s intent to request a transfer to another contractor.

All transfers will be subject to the policies and procedures established by DCS.

### **(4) Temporary Absence from Program.**

- (a) If a Child placed for foster care services with the Contractor runs away or otherwise leaves the foster home without proper authorization or supervision, or is admitted to a hospital (this includes a physical or an acute psychiatric stay) and there is the intent of the Placing Agency for the Child to return to the foster home, the Contractor shall hold the room and bed in the home which is available for the Child's return for up to five (5) calendar days after the Child has been absent from the foster home overnight, unless otherwise directed by the Placing Agency. If a Child has run away and is located within the five (5) day bed hold period and placed elsewhere, the bed hold will end as of the day the Child is placed elsewhere. The bed hold will end for a Child admitted to the hospital if the Child is discharged from the hospital within the five (5) days and placed elsewhere. Any subsequent bed holds requested within thirty days of the initial bed hold request require DCS Deputy Director of Child Welfare Services approval. To bill for the bed hold, there must be intent by the Placing Agency for the Child to return to the foster home. If the Child does not return to the program within five (5) consecutive days of absence, the Contractor will release the room or bed to which the Child was assigned and terminate the per diem charge for the Child at the foster home.
- (b) If a Child placed for foster care services is absent due to being placed in a detention center, the Contractor shall not bill DCS for the days in detention.
- (c) If a Child placed for foster care services is absent due to a visit with parents, siblings, or other relatives, the Contractor may bill DCS for the days of the visit up to ten (10) consecutive days, as long as the Placing Agency has approved the visit in writing.
- (d) If a Child placed for foster care with the Contractor leaves the home for the purpose of pre-adoptive visits with a home that is licensed, DCS will pay the Contractor for the visit days which have been approved by DCS in writing even if DCS is also paying the pre-adoptive home.
- (e) Any exceptions to the above must be approved in writing by the Deputy Director of Child Welfare Services or designee.

(5) **Publications.** Unless consent is given by the DCS Director or his/her designee, the Contractor shall not use a photograph or other personally identifying information concerning any Child placed by DCS with the Contractor in relation to any advertising, marketing or fundraising for the Contractor's programs or services. Nothing in this Contract prohibits the Contractor from using photographs or other personally identifying information for recognition of a Child's school activities, or individual or group achievements or accomplishments. This paragraph shall not apply to a Child for whom an adoptive home is being sought. Nothing in this paragraph is intended to restrict or prohibit the Contractor from publicizing or circulating information about or photographs of a Child if the required consent has been obtained.

(6) **Safeguarding of Information.**

- (a) In accordance with 42 U.S.C. § 671(a)(8), the Contractor shall establish and maintain safeguards which permit use of or disclosure of information concerning individuals placed with the Contractor by a Placing Agency only for purposes directly connected with the following:

- (i) The administration of DCS' plan or programs under Title IV-E of the federal Social Security Act;
- (ii) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of DCS' plan or program under Title IV-E of the federal Social Security Act;
- (iii) The administration of any other federal or federally assisted program which provides assistance in cash, in kind, or in services directly to individuals on the basis of need;
- (iv) Any audit or similar activity conducted in connection with the administration of DCS' plan or program under Title IV-E of the federal Social Security Act by any governmental agency or accrediting body authorized by law to conduct such audit or activity, subject to the limitations stated in subparagraph (b) below; or
- (v) Reporting and providing information to DCS or other appropriate authorities concerning known or suspected incidents of child abuse or neglect.

(b) The safeguards provided will prohibit the disclosure of information to any committee or legislative body, other than to an agency referred to in subparagraph (a)(ii), above, with respect to an activity described in that clause, which identifies by name or address any applicant for or recipient of assistance under Title IV-E of the Social Security Act.

(7) **Adoption of Child.** If a Child is being evaluated or prepared for adoption, the Contractor will transfer all contents of the licensing file including the Adoption/Foster Family Preparation Summary (commonly known as the home study), personal references for the resource family, and the environmental checklist within fourteen (14) business days of receipt of the request. The Contractor shall only be required to release the licensing file directly to DCS. DCS acknowledges that the information contained in any such home study is only as current as the date of its preparation and not as of the date provided.

(8) **Transfer of Children.** If this Contract is terminated by either party or not extended, the Contractor will assist the State, DCS or other Placing Agency in making appropriate arrangements to transfer each Child for whom the State, DCS or other Placing Agency is responsible and whose Treatment Plan has not been completed to a program that is designated by the Placing Agency, with the approval of the court having jurisdiction over the Child, for the purpose of continuing services in accordance with the Child's ICPR and Treatment Plan. In planning and implementing transfer of Children as provided herein, both the Contractor and the State, DCS or other Placing Agency will be guided by the best interest of the Child as paramount to all other interests, including cost or convenience to the parties.

When a Child is transferred from the Contractor to another placement due to termination of this Contract, the Contractor shall deliver to the Placing Agency, or to the Child's new placement as designated by the Placing Agency, the original or a copy of all files and records relating to treatment of a Child who received services under this Contract through an ICPR that was in effect during the term of this Contract.

- (9) **Records at Termination of Contract.** Upon expiration or termination of this Contract, originals or copies of any documents, files, data, studies or reports prepared by Contractor or any subcontractor, relating to programs or services provided through this Contract, shall be delivered to DCS or its designee, if requested by the State.
- (10) **Notice to DCS.** Contractor shall give prompt notice to the State representative listed in Section 34.A.(1) [Notice to Parties] of any changes to the Administrator/Executive Director of the agency and to the staff responsible for the operations of the agency if it is someone other than the administrator (such as a Program Manager). Contractor also will give notice of changes in programming or services offered or populations served.

## **H. Responsibilities of the Placing Agency.**

- (1) **Legal Responsibility.** As required by 42 U.S.C. § 672(a)(2) and applicable orders of a court having jurisdiction over the Child, the Placing Agency retains legal responsibility for placement, care, and supervision of a Child placed with the Contractor pursuant to this Contract and the Child's ICPR.

- (2) **Assessment.** The Placing Agency shall assess the needs of a Child using the approved assessment tool, as defined in 465 IAC 2-17-4. The current approved assessment tool will be specified in the Provider Manual. Based on this assessment, the Placing Agency will make a referral specifying the category of supervision required.

When the placement is through Cross System of Care Coordination (“CSCC”), the CSCC provider will communicate the category of supervision. The CSCC provider will utilize the results from the assessment tool completed by the FCM. If a Licensed Child Placing Agency requests a review of the category of supervision, the CSCC provider will coordinate with the applicable DCS local office director such that the review will be conducted by the DCS local office director.

- (3) **DCS FCM Responsibilities.** The FCM will be responsible for:
  - (a) Notification to the Contractor at least ten (10) business days in advance of any scheduled case reviews and reasonable notification to the Contractor of CFT meetings so that the Contractor may provide adequate notice to the foster family. However, the Contractor's presence at a hearing during which the next case review is scheduled shall satisfy the notice requirements hereunder, provided that if the date of the next scheduled case review is changed, the Contractor will receive the advance notice described in this subparagraph; and
  - (b) Consultation with the Contractor's case management staff to ascertain that Treatment Plans are consistent with individual Case Plans and Permanency Plans.
- (4) **Information to be supplied by the Placing Agency.** At the time of placement or within six (6) business days thereafter, the Placing Agency is required to furnish the Contractor with all pertinent information that relates to the Child and the Child's care and treatment while placed with the Contractor if such information exists. The Contractor shall work diligently with the Placing Agency to facilitate the transfer of this information. The Contractor shall request such documentation every seven (7) days, starting on the seventh day after Child's placement, from the Placing Agency if the documentation is not provided within the initial six (6) days of placement. If this documentation is not

provided by the Placing Agency within the initial six (6) days of the Child's placement, on the seventh day after the Child's placement, the Contractor shall send the Child's FCM or probation officer a written request for such information and include the FCM's or probation officer's supervisor in the request. If the information is still not produced, the Contractor shall continue sending written requests for the information every seven (7) days to the Child's FCM or probation officer and include the respective supervisor(s), as well as additional levels of DCS leadership (Division Manager, Local Office Director, Regional Manager, etc.), until the information is received. Such information will include:

- (a) Child's Case Plan (if available or as soon as required by law);
- (b) Approved assessment tool result (currently CANS);
- (c) Relevant court order(s) as permitted by law or the court;
- (d) Child's education records, including any IEP or 504 documentation, in the possession of the Placing Agency, including the name and any contact information for the Child's current school;
- (e) Copy of Child's current Indiana Medicaid card or Medicaid number (as soon as available from Medicaid);
- (f) ICPR, which will include the appropriate billing information for the Child;
- (g) Child health summary records, medical records, and medical passport, if available (IC §§ 31-28-1, 31-28-2, 31-28-3);
- (h) All necessary releases and consents, including authorization to seek medical treatment; and
- (i) DCS local office contact information.

The Child's full social security number will be disclosed to the Contractor only when expressly permitted or required by state law, federal law, or a court order.

- (5) **Contact Information.** The Placing Agency shall be responsible for advising the Contractor of current agency contact information (FCM, supervisor, and probation officer, if applicable), including telephone numbers and email addresses, to ensure the Contractor meets its obligation of four (4) hour notification if a Child is injured, hospitalized, has a life-threatening illness, has run away, or has died.
- (6) **Determination of IV-E Eligibility Status.** The Placing Agency will be responsible for determination of the Child's initial IV-E eligibility status and any changes in that status.
- (7) **Meeting with the Child.** In collaboration with the Contractor, the assigned FCM will have face-to-face contact with the Child and/or foster parent(s) in accordance with DCS Child Welfare Policy 8:10, which may be revised from time to time.
- (8) **Transfer of the Child.** The Placing Agency will determine if court approval is required or should be obtained for the transfer of a Child due to emergency respite or placement disruptions, and will be responsible for obtaining such approval. When a Contractor gives notice pursuant to Section 1.D.(10) above, the Placing Agency will work diligently with the Contractor to locate another appropriate placement for the Child.

## **2. Consideration.**

- A.** Funding for services to Children under this Contract will be provided by DCS. Behavioral health and other services payable by Medicaid must be billed through Medicaid and are not payable under this Contract. DCS will pay service providers directly as provided in 465 IAC 2-17-26 for health and medical services or treatment. Services which are not included in the Administrative Payment rate (465 IAC 2-17-3) for the Contractor require a separate written authorization from DCS.

**B. Rates.** The per diem to be paid to the Contractor shall include:

- (1) An “Administrative Payment,” as defined in 465 IAC 2-17-3;
- (2) A “Maintenance Payment,” as defined in 465 IAC 2-17-12;
- (3) In appropriate circumstances, an “Enhanced Supervision” payment related to the additional daily supervision described in 465 IAC 2-17-9; and
- (4) In appropriate circumstances, payments for additional items as set out in the Provider Manual.

Following the payment of an initial clothing allotment (if appropriate), the “Maintenance Payment” includes clothing to meet the on-going needs of the Child that is adequate and appropriate to the season and the Child’s age and sex. Any clothing purchased for the Child is the property of the Child and will go with the Child in the event that he/she returns home or moves to another placement.

The Older Youth Services (“OYS”) (formerly Independent Living Services) are included in the Administrative Payment to Contractor and are set out in subsection 1.F of this Contract.

**C. Amount and Source of Payment.** Pursuant to the rule on Rate Setting for CPA, 465 IAC 2-17 *et seq.*, rates will be established on an annual basis with possible adjustments due to the review or appeal process. Annual adjustments to the maintenance, Enhanced Supervision and Administrative Payments shall automatically amend this Contract with respect to those rates per 465 IAC 2-17-20, -21 and -29. DCS will pay the Contractor for the services and programs specified in the ICPR and described in subsections 1.C. and 1.G. of this Contract based on the Contractor’s approved rates as set forth in the current **Attachment 1** to this Contract (which is hereby incorporated into the Contract.) In rare cases, DCS may agree to a different Child-specific rate. Reimbursement of all additional travel expenses will be governed by the terms described in subsection 2.G. of this Contract. Except as otherwise provided herein, payments will be made based on claims submitted by the Contractor to DCS in accordance with Section 37 [Payment and Fiscal Requirements] of this Contract.

All maintenance, Enhanced Supervision or allowances, as set forth in the Child’s ICPR and as defined in the rule (465 IAC 2-17) and in the Provider Manual, must be passed through to the Child’s foster parent. The Contractor shall not pay the foster parent a lesser amount. If the Contractor elects to pay the foster parent a greater amount, it will not affect DCS’ obligation to Contractor.

**D. Other Funding Sources.** The Contractor shall not require any parent, guardian, or custodian responsible for support of a Child placed with the Contractor under any ICPR subject to this Contract to make any payment to the Contractor for support, maintenance, or the cost of services for the Child. Establishment and collection of any required parental support payments for the Child shall be solely the responsibility of DCS.

**E. Time Period for Payment.** Per diem charges for each Child placed under this Contract will begin on the day of the Child’s placement with the Contractor and end on the day before the Child’s termination with the Contractor’s program. The Contractor shall maintain an accurate record of the days the Child was placed in the Contractor’s program in support of each day the

Contractor claims reimbursement from DCS for the per diem. This record shall be maintained in a manner consistent with the requirements of the Provider Manual.

**F. Duplicate Services.** Should the Contractor partner with another provider or have any separate contract with DCS covering any of the same or similar services, including but not limited to behavioral health care or case management for older youth, the Contractor must bill the services under one or the other per DCS' current procedure. Providers may apportion billing as appropriate, but in no event may the same service be billed under more than one contract.

**G. Travel.**

- (1) Except as otherwise provided in this Contract, all expenses for travel (including transportation, mileage, per diem, and any other incidental expenses) of the Contractor or any of its employees, in relation to provision or performance of any services described in this Contract, are included in the service rates described in Section 2 of this Contract.
- (2) Expenditures made by the Contractor for additional travel as described above and in Section 47 [Travel] will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures and the Provider Manual.

**H. Children's Mental Health Initiative Placements.** Funding for respite services to children placed with the Contractor through the CMHI initiative will be provided by DCS. The rate for respite services is \$100 per day. Contractor shall determine the amount to be paid to the foster parent of the \$100. Because this is considered a service, a service referral will be issued for the respite stay.

**3. Term.**

The term of this Contract is two (2) years. It shall commence on January 1, 2024, and shall remain in effect through December 31, 2025.

**4. Access to Records. [Modified]**

- A. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.
- B. Access to Case Records. The Contractor shall grant the State shared access to all case records and other documents described in IC §§ 31-27-6-15 and 31-27-2-5 necessary for its license and monitoring by DCS. The Contractor shall grant DCS shared access to all such documents. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these documents and materials developed and used to assist in the services provided while the materials are in the possession of the Contractor. The Contractor shall provide DCS full, immediate, and unrestricted access to such documents and materials during the term of this Contract and as necessary thereafter.
- C. Delivery of Documents, Files, Data, Studies or Reports to the State. If the Contractor's license is denied/revoked or the institution closes or otherwise goes out of business without passing its records and clients directly to another service provider, Contractor shall deliver all documents, files, data, studies or reports prepared by the Contractor or any subcontractor pursuant to this

Contract, and any supplies purchased by the Contractor or any subcontractor with funds received through this Contract to the State. The State may require the transfer of records, documents, or supplies to its own offices or to a designated successor.

**5. Assignment; Successors; and Subcontracting. [Modified]**

- A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.
- B. The Contractor shall monitor the performance of all subcontractors and shall remain responsible to the State for the performance of any subcontractor. The Contractor agrees to enter into written agreements with all subcontractors and to provide copies of all subcontracting agreements to the State upon request. The Contractor further agrees to notify the State of a breach of these provisions by a subcontractor and to discontinue any agreement with the specified subcontractor in the event of such a breach.

**6. Assignment of Antitrust Claims.**

As part of the consideration for the award of this Contract, the Contractor assigns to the State all right, title and interest in and to any claims the Contractor now has, or may acquire, under state or federal antitrust laws relating to the products or services which are the subject of this Contract.

**7. Audits and Monitoring. [Modified]**

- A. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC § 5-11-1, *et seq.*, and audit guidelines specified by the State.
- B. The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*
- C. In addition to an independent audit completed in accordance with subsection A or B of this Section, the State may, in its discretion, conduct a separate audit(s) of funds provided pursuant to this Contract and/or any other necessary on-site monitoring reviews of the Contractor, for the purpose of: (1) outcome tracking (including, but not limited to, Outcome Measurement described in Section 1.C.(6); (2) quality review of the services provided by the Contractor pursuant to this Contract; and/or (3) conducting any other requisite and/or desired program and/or service audits of the Contractor.
- D. The Contractor shall, upon written demand by State, be required to repay to the State all sums paid by the State to the Contractor, for which adequate fiscal and/or service delivery documentation is not in existence for any time period audited. If an audit of the Contractor results in an audit exception, the State shall have the right to set off such amount against current or future allowable claims,

demand cash repayment, or withhold payment of current claims in a like amount pending resolution between the parties of any disputed amount.

- E. The Contractor agrees that the State has the right to make recommendations and findings in connection with any financial monitoring or audit of the Contractor's operations, and the Contractor agrees to comply with any corrective actions specified by the State, within the time limits established by the State. The State conducts several audits of Contractor, more information on the audits are contained in the Provider Manual.
- F. The Contractor will provide to the State, upon request, a copy of any document or report prepared and maintained by the Contractor relative to costs incurred in providing the services described in this Contract and its attachments/exhibits.
- G. The parties agree that any authorized employee or representative of the State or the United States (hereinafter referred to as "governmental agent") shall have the right to enter the premises of the Contractor or any subcontractor of the Contractor and inspect or audit any records or property agreements maintained by the Contractor or its subcontractors in connection with this Contract. The Contractor and its subcontractors shall make all books, records, and documents that relate to their activities under this Contract available for inspection, review, and audit when requested by a governmental agent. The Contractor shall ensure the cooperation of its employees, officers, board members, and subcontractors in any review, audit, or inspection conducted by a governmental agent.
- H. Following any State monitoring visit to the Contractor, including but not limited to an annual review by the DCS LCPA Licensing and Contract Compliance Unit, the State may provide a written report to the Contractor. If the State chooses to provide a written report following a State monitoring visit to the Contractor, the State shall provide such report within sixty (60) days of such monitoring visit. The State's report may contain observations, evaluations, suggestions and/or specific directions for corrective action by the Contractor. In the event that specific corrective action is required, the Contractor will have sixty (60) days from the receipt of the directions to comply, unless a different time period for correction is specified by the State. A failure of the Contractor to comply with the State's specific directions will be treated as a breach of this Contract. In the case of a dispute, the State and the Contractor will meet at their earliest convenience to resolve the issue in question.
- I. As required, Contractor shall timely file an "Entity Annual Report" (Form E-1) with the State and the Indiana State Board of Accounts.
- J. The Contractor shall maintain financial and accounting records which identify the specific costs attributable to each service component or program listed in the current Attachment 1. The Contractor shall further maintain, and make available to DCS upon request, a written cost allocation plan, which identifies procedures for attributing costs to each program and service component, and which is consistent with any applicable standards or guidelines contained in the applicable Office of Management and Budget ("OMB") Circular or federal procurement regulations 45 CFR Part 74. More restrictive fiscal accountability may be required of the Contractor by DCS should DCS determine that the Contractor is financially unstable, has a history of poor accountability, or has a management system which does not meet the standards required by the State or the United States Government.
- K. The Contractor shall maintain the funds received pursuant to this Contract in an identifiable bookkeeping account and shall use those funds solely for the purpose set forth in this Contract, in accordance with the terms of this Contract and each ICPR for each Child(ren) served by Contractor.

L. The Contractor agrees to follow generally accepted accounting procedures and practices which sufficiently and properly reflect all costs incurred by the Contractor in providing services for payment pursuant to this Contract. The Contractor shall manage and account for all funds received under this Contract in accordance with applicable cost principles specified in one of the following federal regulations 2 CFR Part 230 if the Contractor is a non-profit organization, or 48 CFR Subpart 31.2 if the Contractor is a for-profit or other business or commercial organization.

**8. Authority to Bind Contractor.**

The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

**9. Changes in Work.**

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

**10. Compliance with Laws. [Modified]**

A. The Contractor shall comply with all applicable federal, state and local laws, rules, regulations, and ordinances, including any disaster plan protocol (IV-E and IV-B), and all provisions required thereby to be included herein are hereby incorporated by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC § 4-2-6-10.5 prior to the execution of this Contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of

any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

- E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration ("IDOA") following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this Section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.
- F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.
- G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.
- H. As required by IC § 5-22-3-7:
  - (1) The Contractor and any principals of the Contractor certify that:
    - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
      - (i) IC § 24-4.7 [Telephone Solicitation Of Consumers];
      - (ii) IC § 24-5-12 [Telephone Solicitations]; or
      - (iii) IC § 24-5-14 [Regulation of Automatic Dialing Machines];
    - in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
    - (B) the Contractor will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC § 24-4.7 is preempted by federal law.
  - (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,
    - (A) has not violated the terms of IC § 24-4.7 in the previous three hundred sixty-five (365) days, even if IC § 24-4.7 is preempted by federal law; and
    - (B) will not violate the terms of IC § 24-4.7 for the duration of the Contract, even if IC § 24-4.7 is preempted by federal law.

## **11. Condition of Payment. [Modified]**

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, unauthorized by, in breach of, or inconsistent with this Contract or the applicable ICPR, or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

## **12. Confidentiality of State Information. [Modified]**

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that all information concerning specific children and/or families, and/or any other data, materials, and information gathered, obtained by, based upon, or disclosed to the Contractor for the purpose of this Contract or in relation to the services provided hereunder, will not be disclosed to or discussed with any other persons without the prior written consent of the State. The Contractor further agrees to comply with its own internal privacy/confidential information policy with regard to data, materials, and information disclosed or otherwise provided to the Contractor by the State under the terms of this Contract.

The parties acknowledge that the services to be performed by the Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this Section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC § 4-1-10 and IC § 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this Contract. The Contractor understands and agrees that all data, materials, and information, including but not limited to client information, disclosed to or received by the Contractor or any subcontractor in administering the terms and provisions of this Contract, shall be received and maintained in a confidential manner commensurate with the conditions set forth in this Contract and the requirements of all applicable State and/or federal laws and/or regulations.

## **13. Continuity of Services. [Modified]**

- A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration and/or termination, a successor, either the State or another contractor, may continue them. The Contractor agrees to:
  - (1) Furnish phase-in training; and
  - (2) Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. The Contractor shall, upon the State's written notice:
  - (1) Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires and/or is terminated; and
  - (2) Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.
- C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the

Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration and/or termination that result from phase-in, phase-out operations).

#### **14. Debarment and Suspension.**

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term “principal” for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State’s request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

#### **15. Default by State.**

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

#### **16. Disputes.**

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner’s decision shall be the final and conclusive

administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

- D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.
- E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.
- F. This paragraph shall not be construed to abrogate provisions of IC § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with IC § 4-6-2-11, which requires approval of the Governor and Attorney General.

## **17. Drug-Free Workplace Certification.**

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

## **18. Employment Eligibility Verification.**

As required by IC § 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC § 22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
- B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
- C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

## **19. Employment Option. [Modified]**

- A. For purposes of this Section, “employee” includes all staff working on the duties which are the subject of this Contract, including, but not limited to, the Contractor’s employees working on this Contract, any subcontractors working for the Contractor on this Contract, and any of these subcontractors’ employees or subcontractors.
- B. For purposes of this Section, the term “hire” or “hiring” means to hire, to directly contract with, to subcontract with, and/or to procure services through a State managed service provider, State quantity purchase agreement, or its equivalent (as determined by the State).
- C. If the State determines at any time during the term of this Contract (including any extensions thereto) that it would be in the State’s best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect within thirty (30) days of receiving a request for such release from the State. This release will be at no cost to the State or the employee.

D. In order to effectuate the purpose of this Section, the State may initiate conversations about a potential hiring with any employee of the Contractor at any time during the term of this Contract (including any extensions thereto).

## **20. Force Majeure.**

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

## **21. Funding Cancellation.**

As required by Financial Management Circular 3.3 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

## **22. Governing Law.**

This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

## **23. HIPAA Compliance - Modified.**

A. This Section applies only to the extent that the Contractor receives any protected health information ("PHI"), as referenced in subsection B below, or any alcohol and drug abuse records (as defined in IC § 16-18-2-12), health records (as defined in IC § 16-18-2-168), or mental health records (as defined in IC § 16-18-2-226), concerning any individual, in connection with performance of any services under this Contract. Any records included in the above definitions in IC § 16-18-2 are referred to herein as "Health Records."

B. HIPAA. The Contractor agrees to comply with all applicable requirements of the Health Insurance Portability and Accountability Act of 1996, Title II, Administrative Simplification ("HIPAA"), including amendments signed into law under the American Recovery and Reinvestment Act of 2009 ("ARRA"), in particular, applicable provisions of Title XIII known as the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Subtitle D, in all activities related to this Contract, to maintain compliance during the term of this Contract and after as may be required by federal law, to operate any systems used to fulfill the requirements of this Contract in full compliance with all applicable provisions of HIPAA and to take no action which adversely affects the State's HIPAA compliance.

Terms used, but not otherwise defined, in this Contract shall have the same meaning as those found in the HIPAA Regulations under 45 CFR Parts 160, 162, and 164.

To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor assures that it will appropriately safeguard all forms of Health Records and/or Protected Health Information ("PHI"), as defined by the regulations, which is made available to

or obtained by the Contractor in the course of its work under this Contract. The Contractor agrees to comply with all applicable requirements of law relating to Health Records and/or PHI with respect to any task or other activity it performs for the State including, as required by the final Privacy and Security regulations:

- (1) Implementing the following HIPAA requirements for any forms of Health Records and/or PHI that the Contractor receives, maintains, or transmits on behalf of the State:
  - (a) Administrative safeguards under 45 CFR § 164.308
  - (b) Physical safeguards under 45 CFR § 164.310
  - (c) Technical safeguards under 45 CFR § 164.312
  - (d) Policies and procedures and documentation requirements under 45 CFR § 164.316;
- (2) Implementing a disaster recovery plan, as appropriate for work conducted for this Contract, which includes mechanisms to recover data and/or alternative data storage sites, as determined by the State to be necessary to uphold integral business functions in the event of an unforeseen disaster;
- (3) Not using or further disclosing Health Records and/or PHI other than as permitted or required by this Contract or by applicable law;
- (4) Immediately reporting to the State representative listed in Section 34.A.(1) [Notice to Parties] any security and/or privacy breach directly relating to the work performed for this Contract of which the Contractor becomes aware;
- (5) Mitigating, to the extent practicable, any harmful effect that is known to the Contractor and immediately reporting to the State representative listed in Section 34.A.(1) [Notice to Parties] any use or disclosure by the Contractor, its agent, employees, subcontractors or third parties, of Health Records and/or PHI obtained under this Contract in a manner not provided for by this Contract or by applicable law of which the Contractor becomes aware;
- (6) Ensuring that any subcontractors or agents to whom the Contractor provides Health Records and/or PHI received from, or created or received by the Contractor, subcontractors or agents on behalf of the State agree to the same restrictions, conditions and obligations applicable to such party regarding Health Records and/or PHI and agree to implement the required safeguards to protect it;
- (7) Making the Contractor's internal practices, books and records related to the use or disclosure of Health Records and/or PHI received from, or created or received by, the Contractor on behalf of the State available to the State at its request or to the Secretary of the United States Department of Health and Human Services ("DHHS") for purposes of determining the State's compliance with applicable law. The Contractor shall immediately notify the State representative listed in Section 34.A.(1) [Notice to Parties] upon receipt by the Contractor of any such request from the Secretary of DHHS or designee, and shall provide the State representative listed in Section 34.A.(1) with copies of any materials made available in response to such a request;

- (8) In accordance with procedures established by the State, making available the information required to provide an accounting of disclosures pursuant to applicable law, if the duties of the Contractor include disclosures that must be accounted for;
- (9) Making available Health Records and/or PHI for amendment and incorporating any amendments to Health Records and/or PHI in accordance with 45 CFR § 164.526, if the Contractor maintains Health Records and/or PHI subject to amendment;
- (10) Make Health Records and/or PHI available to individuals entitled to access and requesting access in compliance with 45 CFR § 164.524 and the duties of the Contractor;
- (11) At the discretion of the State, authorizing termination of this Contract if the Contractor has violated a material provision of this Section; and
- (12) At the termination of the Contract, the Contractor shall return or destroy all Health Records and/or PHI received or created under the Contract. If the State determines return or destruction is not feasible, the protections in this Contract shall continue to be extended to any Health Records and/or PHI maintained by the Contractor for as long as it is maintained.

C. Drug and Alcohol Patient Abuse Records. In the performance of the services listed in this Contract, the Contractor may have access to confidential information concerning the disclosure and use of alcohol and drug abuse patient records. The Contractor understands and agrees that data, materials and information disclosed to the Contractor may contain confidential and protected data, including confidential individual information concerning alcohol and drug abuse patient records. Therefore, the Contractor promises and assures that any such confidential data, material, and information gathered or disclosed to the Contractor for the purposes of this Contract and specifically identified as Confidential Information will not be disclosed or discussed with others without the prior written consent of the State. The Contractor and the State shall comply with applicable requirements under 42 CFR Part 2 and any other applicable federal or state statutory or regulatory requirements. The Contractor shall immediately report any unauthorized disclosures of these records to the State representative listed in Section 34.A.(1) [Notice to Parties].

D. The Contractor will indemnify and hold harmless the State, DCS or other Placing Agency, in accordance with Section 24 [Indemnification] of this Contract, in the event any claim is made against the State, DCS or other Placing Agency by the Office of Civil Rights or any person that alleges a violation of any applicable law concerning PHI or health records that would, if substantiated, constitute a breach of any provision of this Section.

#### **24. Indemnification.**

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State will not provide indemnification to the Contractor.

#### **25. Independent Contractor; Workers' Compensation Insurance.**

The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of

the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and Contractor shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

**26. Indiana Veteran Owned Small Business Enterprise Compliance. [Deleted]**

**27. Information Technology Enterprise Architecture Requirements.**

If this Contract involves information technology-related products or services, the Contractor agrees that all such products or services are compatible with any of the technology standards found at <https://www.in.gov/iot/2394.htm> that are applicable, including the assistive technology standard. The State may terminate this Contract for default if the terms of this paragraph are breached.

**28. Insurance. [Modified]**

A. The Contractor and its subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

- (1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$3,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
- (2) Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$700,000 per person and \$3,000,000 per occurrence. The State is to be named as an additional insured on a primary, non-contributory basis.
- (3) Errors and Omissions liability with minimum liability limits of \$1,000,000 per claim and in the aggregate. Coverage for the benefit of the State shall continue for a period of two (2) years after the date of service provided under this Contract.
- (4) Fiduciary liability is required if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others. These contractors face potential claims for mismanagement brought by plan members. Limits should be no less than \$700,000 per cause of action and \$1,000,000 per occurrence.
- (5) Cyber liability addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than \$1,000,000 in the aggregate.
- (6) The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC § 22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

- (1) The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
- (2) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
- (3) The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
- (4) The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
- (5) The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

## **29. Key Person(s). [Modified]**

- A. If both parties have designated that certain individual(s) are essential to the services offered, the parties agree that should such individual(s) leave their employment during the term of this Contract for whatever reason, the State shall have the right to terminate this Contract upon thirty (30) days' prior written notice.
- B. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.

Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

C. Pursuant to subsection 1.G.(9) above, Contractor shall provide notice to the State representative listed in Section 34.A.(1) [Notice to Parties] immediately upon the departure or replacement of the Administrator/Executive Director or equivalent senior executive.

Key person(s) to this Contract is: Contractor's Administrator/Executive Director or equivalent senior executive.

## **30. Licensing Standards. [Modified]**

The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services

to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract. If the license of any employee or subcontractor expires or is revoked, the Contractor will immediately prohibit such employee or subcontractor from providing any services that are subject to this contract. The State may, at its option, terminate this Contract if the Contractor fails to comply with this requirement.

### **31. Merger & Modification. [Modified]**

- A. This Contract constitutes the entire agreement between the parties with respect to the subject matter herein. All prior agreements, representations, statements, negotiations, and undertakings are hereby superseded. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. Except as provided herein, this Contract shall not be modified, supplemented, or amended in any manner.
- B. If the Contractor wants to request termination of any service payable or reimbursable pursuant to this Contract, the Contractor shall submit a written request to the State representative listed in Section 34.A.(1) [Notice to Parties] of the Contract at least thirty (30) days prior to the date that Contractor wishes to terminate the service(s). Contractor shall **NOT** be permitted to terminate or cancel the Contract under this Section or subsection of the Contract. A termination of a service(s) under this subsection shall not require the execution of a formal amendment to the Contract; this may be accomplished by written notice from the State to the Contractor approving the termination of service. If appropriate and determined necessary by DCS, an updated **Attachment 1** may accompany such notice.

Contractor's written request, described in the paragraph above, must include:

- (1) details concerning which services or service program categories are involved;
- (2) the requested termination of service(s) effective date(s);
- (3) information and evidence demonstrating Contractor's staff used all avenues to preserve the services or service program category;
- (4) a list of every Child impacted by Contractor's termination of service request; and
- (5) a coordinated list that identifies each Child's Family Case Manager, Probation Officer, and county office originating the placement.

The Contractor shall collaborate with DCS, DCS Family Case Manager(s), and Probation Officer(s) to ensure each Child impacted by a termination of services is transitioned to a DCS approved new placement that supports each Child's continuity of care and occurs with the least disruption possible. In addition, before implementing a DCS approved transfer to a different program, provider, or facility, the Contractor shall consult with the receiving program staff or placing agent, as determined appropriate by the DCS, to promote a successful transition for each Child and to maintain continuity of the specialized services and care unique to each Child. The Contractor shall prepare and forward case file documentation and make appropriate recommendations to the gaining facility or placement agent to ensure each Child's success.

- C. As described in subsection 2.C. and permitted by Administrative Rule, the rates for this Contract may be adjusted annually. Such adjustments automatically amend this Contract (465 IAC 2-17-21(h), 29).
- D. As described in subsection 1.E.(1), the parties anticipate that there may be certain changes that may affect the approved array of behavioral health services which the Contractor is able to offer and that such changes may require an update to Attachment 1. Therefore, pursuant to IC § 5-22-20, DCS reserves the right to make unilateral changes in the work approved within the Scope of the Contract as it pertains to the behavioral health services. Should the State (on its own or after it considers a request of the Contractor) determine that such change in service availability and/or service code and/or service component and/or their associated rates require modification and such modification requires a revision to the information included in Attachment 1, such changes shall not require the execution of a formal amendment to this Contract, but may be accomplished by written notice from the State to the Contractor with an accompanying updated Attachment 1, if necessary. This written notice shall become part of the Contract and will be available for review, upon request, at the Indiana Department of Child Services, 302 W. Washington Street, Room E306, Indianapolis, IN 46204, until such time as it is posted electronically on the internet.
- E. With the exception of the procedures permitted pursuant to subparagraphs B, C, and D of this Section, this Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

Nothing herein shall be construed as a commitment to execute future agreements with the Contractor or to extend this Contract in any way.

**32. Minority and Women's Business Enterprises Compliance. [Deleted]**

**33. Nondiscrimination.**

Pursuant to the Indiana Civil Rights Law, specifically IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). The Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, the Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

**34. Notice to Parties. [Modified]**

- A. Whenever any notice, statement or other communication is required under this Contract, it shall be sent via email and/or regular U.S. mail to the following addresses, unless otherwise specifically advised.

(1) Notices to the State shall be sent via email and/or regular U.S. mail to:

**Deputy Director of Child Welfare Services  
Indiana Department of Child Services  
302 W. Washington Street, Room E306, MS 47  
Indianapolis, IN 46204  
Email: [ChildWelfarePlan@dcs.in.gov](mailto:ChildWelfarePlan@dcs.in.gov) and [residential.licensing@dcs.in.gov](mailto:residential.licensing@dcs.in.gov) (or  
designated successor's email)**

(2) Notices to the Contractor shall be sent via email and/or regular U.S. mail to:

**(Contact name)  
(Contact title, if applicable)  
(Name of Agency)  
(Address Line 1)  
(Address Line 2)  
(Email address)**

B. Notice of any change in the person or address to whom notices should be sent and/or e-mailed, as specified in subsection A of this Section, shall be given to the other party in the manner provided in subsection A of this Section.

C. As required by IC § 4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

### **35. Order of Precedence; Incorporation by Reference. [Modified]**

Any inconsistency or ambiguity in this Contract and related documents shall be resolved by giving precedence in the following order: (1) the provisions of any applicable court order; (2) the applicable ICPR; (3) the individual Child's current Case Plan and Treatment Plan; (4) this Contract; (5) Attachments to this Contract; (6) any additional or supplemental documents prepared by DCS or a Placing Agency and accepted by Contractor; and (7) any additional or supplemental documents prepared by the Contractor and accepted by DCS. All documents referred to in this paragraph are hereby incorporated fully by reference.

### **36. Ownership of Documents and Materials.**

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the

Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

### **37. Payments and Fiscal Requirements. [Modified]**

- A. All payments shall be made thirty-five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC § 4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. State fiscal policies and procedures may include agency-specific requirements for submission of documentation to verify working capital, including balance sheets or profit and loss statements as requested by State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC § 4-13-2-20. If the Contractor prefers not to have any interest calculated on payments made by the State as permitted by Indiana law and referenced below in Section 38 [Penalties/Interest/Attorney's Fees], the Contractor may send a letter indicating such preference to the Indiana Auditor of State with a copy to DCS.
- B. The Contractor shall submit invoices/claim forms and all supporting documentation as may be required by DCS for payment pursuant to this Contract. DCS will notify the Contractor of any change in invoice/claim procedure, and the Contractor shall use whatever invoice/claim forms and documentation are required by DCS' then current procedure and shall submit the appropriate invoices/claim forms and documentation to DCS, as directed. Invoices/claim forms may be submitted monthly for services performed during the calendar month(s) preceding the date of the invoice. Payment will be due not later than thirty-five (35) days after the date Contractor's invoice is received by DCS, together with a properly prepared invoice/claim voucher and any required documentation as approved by DCS. However, the payment due date shall not apply to any invoice/claim that is disapproved or returned to the Contractor by DCS for revision or additional documentation, within thirty-five (35) days after the date it is received by DCS. The Contractor's invoice must be dated no earlier than the later of (a) the first date the Contractor is entitled to submit an invoice/claim for payment under the applicable provision of this Contract, or (b) one (1) day before the date the invoice and accompanying claim documentation is delivered or mailed to DCS.
- C. An invoice will not be deemed to be properly prepared, as required above in subsection B, if it is not received within ten (10) business days of the date included on the invoice (the "Invoice Date"). Any invoices submitted more than ten (10) business days after the Invoice Date will be deemed improperly prepared and will not be paid. DCS shall return such improperly prepared invoices to the Contractor for revision and such invoices must be resubmitted by the Contractor with a current Invoice Date in order to be processed for payment.
- D. At a minimum and unless otherwise directed by DCS, all claims submitted by the Contractor shall be submitted with appropriate documentation attached showing completion of the service units for which Contractor is requesting payment under this Contract and each applicable ICPR. Documentation shall specify the program and services provided for each Child for whom the claim is submitted, the name of the Child, the dates on which the services were provided, and the payment rate applicable to the Child, program, and services provided, based on the rates established and approved for the particular program or service as provided in Section 2 of this Contract and specified in the ICPR for the Child.
- E. A properly prepared invoice/claim shall be submitted to DCS within ninety (90) calendar days from the last day of the month the service/placement occurred. DCS may elect to deny payment of any invoices/claims that are not timely submitted as required in this paragraph. In the event the Contractor delays submitting a claim for which it expects third-party reimbursement, the Contractor may submit a written explanation to DCS as to why the claim was not timely.

submitted. If the claim was delayed because of billing Medicaid for reimbursement that was denied, the explanation must include the specific reason(s) for denial. If DCS deems that such written explanation described above is satisfactory, DCS shall pay otherwise valid claims. In the event that Medicaid has denied reimbursement because the Contractor failed to provide adequate documentation for an otherwise reimbursable claim, DCS will only be liable to pay the amount it would have paid had Medicaid approved the claim.

- F. With the exception of costs governed by any Child's individual placement referral, no costs may be incurred by or services provided by the Contractor for payment under this Contract after the expiration date of the term stated in Section 3 of this Contract.
- G. Approval and payment of all claims will be conditioned upon receipt and approval by the Placing Agency of all reports and other documents relating to each Child for whom a claim is submitted, as required by any applicable provision of this Contract, the Child's ICPR, the current Case Plan, or the Treatment Plan.
- H. The Contractor understands and agrees that payment of all compensation by DCS shall be conditioned upon the Placing Agency's approval of the Contractor's delivery of services and satisfactory performance of this Contract.
- I. Contractor acknowledges that failure to properly complete required criminal and background checks on its staff or foster/resource parents can result in DCS being penalized by a being unable to claim IV-E reimbursement. To the extent that DCS cannot claim IV-E reimbursement because of Contractor's inadequate background checks, Contractor must reduce its invoices to DCS. If any unreimbursable costs are invoiced in error, DCS may deny payment. For the purposes of payment pursuant to this Section, an invoice containing both reimbursable and unreimbursable costs has not been properly prepared. If DCS has already paid an invoice later determined to have included unreimbursable costs, DCS may offset those unreimbursable costs against any outstanding or subsequently submitted invoices.
- J. Any available state match related to Medicaid-eligible services provided pursuant to this Contract may be paid directly to the CMHC. Contractor will execute any assignment of payment or other form of payment designation necessary to allow such direct payment. Any DCS-payable services (not Medicaid eligible, whether because of the type or quantity of service), will be paid directly to Contractor at the rates on Attachment 1. There is no match for services paid with state dollars.

### **38. Penalties/Interest/Attorney's Fees.**

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC § 5-17-5, IC § 34-54-8, IC § 34-13-1 and IC § 34-52-2.

Notwithstanding the provisions contained in IC § 5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

### **39. Progress Reports** is included in subsection 1.D.(8). **[Modified]**

### **40. Public Record.**

The Contractor acknowledges that the State will not treat this Contract as containing confidential information and the State will post this Contract on the transparency portal as required by Executive

Order 05-07 and IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

**41. Renewal Option.**

This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC § 5-22-17-4. The term of the renewed contract may not be longer than the term of the original Contract.

**42. Severability.**

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

**43. Substantial Performance.**

This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

**44. Taxes.**

The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

**45. Termination for Convenience. [Modified]**

This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

If the Contract is terminated in part under this Section, the Termination Notice will specify the particular programs and facilities of the Contractor to which the termination applies. The Contractor shall not increase the payment rates for any services or programs not affected by the Termination Notice.

**46. Termination for Default and Termination or Suspension for Additional Reasons. [Modified]**

**A. Termination for Default.**

- (1) With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

- (a) Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
- (b) Deliver the supplies or perform the services within the time specified in this Contract or any extension;
- (c) Make progress so as to endanger performance of this Contract; or
- (d) Perform any of the other provisions of this Contract.

**B. Termination for Endangering Life, Health, or Safety of Any Person.**

If the State determines that any action or inaction by the Contractor endangers the life, health, or safety of any person, the State may terminate this Contract by orally notifying the Contractor of the termination, followed by the mailing of written notification thereof within three (3) business days. Termination pursuant to this paragraph shall become effective at the time of the oral notification.

**C. Termination for Certain Business Changes, Assignments, and Bankruptcy.**

The Contractor agrees that the State may terminate this Contract immediately if the Contractor (1) ceases doing business; (2) assigns, transfers or delegates any of its duties and responsibilities for performance of this Contract to any other person or entity without prior written approval of the State; (3) changes or reorganizes its business in a manner which substantially impairs the ability of the Contractor to perform the services described in this Contract and its exhibits/attachments; (4) attempts to assign, transfer, convey or encumber this Contract in any way except as expressly authorized pursuant to the conditions of this Contract; and/or (5) if an order for relief is entered upon a voluntary or involuntary petition by or against the Contractor under any provision of Title 11, United States Code, and the trustee or debtor-in-possession does not timely assume all obligations of this Contract to be performed by the Contractor, as provided in 11 U.S.C. § 365, or in the event of appointment of a receiver for the Contractor or execution of an assignment for the benefit of creditors of the Contractor. Any notice of termination pursuant to this paragraph shall be provided in writing to the Contractor.

**D. Termination for Change in Legal Status.**

The Contractor shall provide written notice to the State of any change in the Contractor's legal name or legal status including, but not limited to, a sale or dissolution of the Contractor's business. **When possible, DCS requests such notice ninety (90) days prior to the change in legal status in order to reduce the risk of an interruption in services occurring.** The State reserves the right to terminate this Contract should the Contractor's legal status change in any way. Termination pursuant to this paragraph shall be effective from the date of the change in the Contractor's legal status.

**E. Termination for Additional Reasons Stated in this Contract.**

This Contract is also subject to termination or suspension as stated in any other Section of this Contract, including, but not limited to: Section 7 [Audits and Monitoring]; Section 10 [Compliance with Laws]; Section 15 [Default by State]; Section 17 [Drug-Free Workplace Certification]; Section 20 [Force Majeure]; Section 21 [Funding Cancellation]; Section 28 [Insurance]; Section 30 [Licensing Standards]; Section 33 [Nondiscrimination]; and Section 53 [Criminal and Background Checks].

**F. State Only Liable for Payment for Services Properly Provided Prior to Termination.**

If this Contract is terminated for any reason, the State shall only be liable for payment for services properly provided prior to the effective date of termination based on the applicable service rates described in Section 2 of this Contract and effective at the time of the termination. The State shall not be liable for any costs incurred by the Contractor in reliance upon this Contract subsequent to the effective date of termination.

#### **G. Termination in Whole or in Part.**

If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

#### **H. Supplies Delivered and Services Accepted.**

The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

The rights and remedies of the State under this Section are in addition to any other rights and remedies provided by law or equity or under this Contract.

#### **47. Travel. [Modified]**

- A. Travel specified in 465 IAC 2-17-12 is included in the maintenance payment. DCS will only pay in accordance with the Provider Manual for extraordinary/additional properly claimed travel expenses incurred for a Child placed in the foster home. To claim additional travel, the foster parent must document all travel, including the travel already included in the per diem payment; and the CPA, on behalf of the foster parent, must invoice the additional travel as specified in the Provider Manual.
- B. Except as specifically addressed above, all expenses for travel (including transportation, mileage, per diem, and any other incidental expenses) of the Contractor or any of its employees, in relation to the provision or performance of any services described in this Contract, including those expenses related to court appearances, are included in the per diem amounts established in accordance with 465 IAC 2-17 and Section 2 of this Contract.
- C. Expenditures made for additional travel will be reimbursed at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular and the Provider Manual.

#### **48. Waiver of Rights. [Modified]**

No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract. No waiver by the State of any breach of any provision of this Contract shall constitute a waiver of any prior, concurrent, or subsequent breach of the same or any other provisions hereof.

#### **49. Work Standards. [Modified]**

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards applicable to the services provided under this Contract. The Contractor is responsible for ensuring that its employees, agents, and any subcontractors conform to the professional and technical guidelines and standards applicable to all services and programs that the Contractor provides under this Contract, including the program standards and service categories described or referenced in Section 1 [Duties of Contractor] of this Contract. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on the programs and services being offered under this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

#### **50. Religious or Political Activities. [Added]**

- A. The Contractor agrees that services provided pursuant to this Contract shall be non-sectarian in nature and that religious activities shall not be in any activities to be conducted hereunder. The Contractor agrees that, if it otherwise conducts religious activities as part of its organization, any inherently religious activities must be offered separately, in time or location, from the programs or services funded with direct federal financial assistance and participation must be voluntary for beneficiaries of the programs or services funded with such assistance.
- B. The Contractor certifies that any funding provided by the State pursuant to this Contract shall not be used to further any type of political or voter activity.

#### **51. Environmental Tobacco Smoke. [Added]**

The Contractor agrees to comply with all provisions of 20 U.S.C. § 6081 *et seq.*, and any regulations promulgated thereunder. In particular, the Contractor agrees that it will require that smoking be prohibited in any portion of an indoor facility, other than a private residence, regularly used for the provision of services to children under the age of eighteen (18), and that it will comply with all applicable requirements of the statute and regulations. The Contractor further agrees that it will require the language of this condition to be included in any subcontracts which contain provisions for services to children.

#### **52. Lobbying Activities. [Added]**

- A. Pursuant to 31 U.S.C. § 1352, and any regulations promulgated thereunder, the Contractor hereby assures and certifies, to the best of its knowledge and belief, that no federally appropriated funds have been paid, or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Contract, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying". If the Contractor is required to submit Standard Form-LLL, the form and instructions for preparation of the form may be obtained from the State.

- C. The Contractor shall require that the language of this certification be included in any subcontracts and that all subcontractors shall certify and disclose accordingly.
- D. The foregoing certification is a material representation of fact upon which reliance was or will be placed when entering into this Contract and any transactions with the State. Submission of this certification is a prerequisite for making or entering into any transaction as imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

### **53. Criminal and Background Checks. [Added]**

To ensure Contractor remains in compliance with the Contract, Contractor shall be responsible for modifying its practices to comply with all applicable federal and state laws, administrative letters, DCS Child Welfare Policies 13.03 and 13.04, which includes, but are not limited to the following:

- A. This Section applies to all directors/chief executive officers, facility managers, licensing applicants and other heads of agencies, by whatever title, and each employee or volunteer (including interns) of the Contractor or any subcontractor or subcontractor's employee who performs any service or activity pursuant to this Contract ("Covered Personnel"). The Contractor (referred to in this Section as Provider) shall be responsible for performing and ensuring Covered Personnel undergo all checks of local criminal records and backgrounds required by law, this Contract, Administrative Letter, and applicable DCS Child Welfare Policies found at <https://www.in.gov/dcs/2354.htm> (or successor website) ("Required Checks"). Any person who might serve as a substitute for a Covered Personnel position, even in emergency circumstances, shall undergo the Required Checks for that position. All Required Checks must be completed and all outstanding issues resolved *prior* to the Covered Personnel commencing contractual duties. The Provider has an ongoing obligation to conduct Required Checks for employees, volunteers, interns, subcontractors, and subcontractor's employees who join the Provider or subcontractor(s) after this Contract begins. Such persons may not provide any services that involve children or their records before the requisite checks have been completed and all outstanding issues resolved.
- B. The Required Checks will be conducted in the same manner as required for licensed residential child caring institutions, with respect to IC § 31-27-3-3, subsections (e)(1) and (f). As applicable laws and DCS' policies and practices are updated periodically, the Provider shall comply with the most current laws and DCS' policies. Upon written request, DCS will furnish the Provider with information on updates and any changes in policy or procedure.
- C. The Provider shall maintain records of information it gathers and receives on Covered Personnel checked pursuant to this Section, and such records shall be provided to the DCS or be made available for inspection by authorized representatives of the DCS upon request.
- D. At the time the Contractor submits this Contract for signature, and annually upon the anniversary of the effective date of this Contract, the Provider shall collect, verify, and make available to the DCS all documentation demonstrating the Required Checks of Covered Personnel have been completed and are compliant with the then-existing law and DCS policy. The Provider shall furnish any documentation related to these Required Checks as DCS requests.
- E. In order to allow DCS to evaluate the results and to make determinations regarding qualifications, national fingerprint-based criminal history checks relating to Covered Personnel are required to be conducted through DCS' approved fingerprint vendor in accordance with the terms and conditions stated in IC §§ 10-13-3-38.5 and 39. The results of the national fingerprint-based criminal history checks will be returned to DCS as an authorized entity to receive the results.

DCS will inform the Provider whether the report it receives concerning the subject of a check shows any record that would be grounds for denial of his/her ability to provide services and/or perform activities pursuant to this Contract. If any Covered Personnel receive a response of conditionally disqualified or disqualified, further follow up is required. If the result is disqualified, then the individual may be eligible for a waiver. The Provider should contact the DCS' background check unit to determine if the individual is eligible and to apply for the waiver. DCS will not release to the Provider any criminal history record information ("CHRI") contained in any report that it receives from the Federal Bureau of Investigation ("FBI") through the Indiana State Police ("ISP"). If the Provider requests a waiver of criminal history, DCS will inform the Provider of the decision on the waiver request.

- F. In the event a criminal history or background check required herein produces any record concerning the subject of a check that would be a ground for denial of his or her ability to provide services and/or perform activities pursuant to this Contract and the Provider chooses to retain such employee or volunteer, that decision may be considered a material breach of this Contract.
- G. The Provider will be responsible for payment of all fees required to be paid for conducting any check required under this Section, whether the check is conducted by the Provider or by DCS. Any fees paid by DCS on behalf of the Provider may be offset against any claim for payment submitted by the Provider under this Contract.

#### **54. Survival – Added.**

All terms of this Contract which, by their nature, are intended to survive termination, in whole or in part, and/or expiration of this Contract will survive termination, in whole or in part, and/or expiration of this Contract, including, but not limited to, the following Sections: Section 1D.(8). Progress Reports; Section 4. Access to Records; Section 6. Assignment of Antitrust Claims; Section 7. Audits and Monitoring; Section 12. Confidentiality of State Information; Section 13. Continuity of Services; Section 16. Disputes; Section 19. Employment Option; Section 22. Governing Law; Section 23. HIPAA Compliance; Section 24. Indemnification; Section 36. Ownership of Documents and Materials; Section 37. Payments and Fiscal Requirements; Section 38. Penalties/Interest/Attorney's Fees; Section 40. Public Record; Section 45. Termination for Convenience; Section 46. Termination for Default and Termination or Suspension for Additional Reasons; Section 47. Travel; Section 48. Waiver of Rights; Section 53. Criminal and Background Checks; and Section 52. Lobbying Activities. The above list of Sections surviving the termination and/or expiration of this Contract is not exhaustive and there are other provisions of this Contract which shall survive the termination, in whole or in part, and/or expiration of this Contract.

#### **55. State Boilerplate Affirmation Clause.**

I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's standard contract clauses (as contained in *2022 SCM Template*) in any way except as follows: inapplicable, modified or added Sections are identified in the body of this Contract.

**THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK**

### Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC § 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC § 4-2-6-10.5.**

### Agreement to Use Electronic Signatures

I agree, and it is my intent, to sign this Contract by accessing State of Indiana Supplier Portal using the secure password assigned to me and by electronically submitting this Contract to the State of Indiana. I understand that my signing and submitting this Contract in this fashion is the legal equivalent of having placed my handwritten signature on the submitted Contract and this affirmation. I understand and agree that by electronically signing and submitting this Contract in this fashion I am affirming to the truth of the information contained therein. I understand that this Contract will not become binding on the State until it has been approved by the Department of Administration, the State Budget Agency, and the Office of the Attorney General, which approvals will be posted on the Active Contracts Database:  
[https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI\\_CUSTOM\\_APPS.SOI\\_PUBLIC\\_CNTRCTS.GBL](https://fs.gmis.in.gov/psp/guest/SUPPLIER/ERP/c/SOI_CUSTOM_APPS.SOI_PUBLIC_CNTRCTS.GBL)?

**In Witness Whereof**, the Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

[Contractor] \_\_\_\_\_

Indiana Department of Child Services

By: \_\_\_\_\_

By: \_\_\_\_\_

Eric Miller, Director

\_\_\_\_\_  
Name and Title, Printed

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Approved by:**

Indiana Department of Administration

**Approved by:**

Indiana State Budget Agency

By: \_\_\_\_\_ (for)  
Lesley A. Crane, Commissioner

By: \_\_\_\_\_ (for)  
Zachary Q. Jackson, Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED as to Form and Legality:**

Office of the Attorney General

*Form approval has been granted by the  
Office of the Attorney General pursuant to  
IC 4-13-2-14.3(e) on September 29, 2023.  
FA 23-46*

This Contract form was prepared by agency legal counsel Jane M. Kennedy on August 29, 2023.