

SAMPLE CHILD WELFARE SERVICES PROVIDER
PROFESSIONAL SERVICES CONTRACT

[REDACTED]

This Contract (“this Contract” or “Contract”), entered into by and between the Indiana Department of Child Services (the “State” or “DCS”) and [REDACTED] (“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. The Contractor shall provide Intensive Foster Care Services for this Contract (“Intensive Foster Care Services”). A detailed list of Contractor’s duties (“Services”) concerned with the Intensive Foster Care Services is set forth below in Section 1 [Duties of Contractor] and in the Service Standards, the most current form of the Service Standards are attached hereto and are incorporated herein as **Attachment 1** (the “Service Standards”).

B. Definitions. As used in this Contract, the following terms are defined as follows:

- (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) **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.”
- (6) **Contractor’s RFP Response** means the Contractor’s Response to the Intensive Foster Care Services RFP (which includes the Contractor’s RFP Response to any necessary Supplemental RFPs), as refined based on any subsequent Contractor agreement to services or rates (including any differential (if applicable)), which was submitted by the Contractor in accordance with the specifications of the Intensive Foster Care Services RFP. Contractor’s RFP Response is incorporated by reference into this Contract.
- (7) **DCS’ Child Welfare Principles** means the most current version of DCS’ Principles of Child Welfare Services, as such DCS’ Child Welfare Principles are modified/updated from time to time by DCS but are always available in their most current form at the following link (or any designated successor website):
[insert link]
The DCS’ Child Welfare Principles are hereby incorporated by reference into this Contract.
- (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 pursuant to this Contract, as such Service Standards are modified/updated from time to time by DCS but are always available in their most current form at the following link (or any designated successor website):

[insert link]

These Service Standards are incorporated by reference into this Contract.

- (9) **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.
- (10) **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 2** 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 2** will control. A sample ICPR is attached hereto as **Attachment 3** and is incorporated herein.
- (11) **Individual Education Program** ("IEP") means a plan for educational support services and outcomes developed for students enrolled in special education programs.
- (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) **Intensive Foster Care Services Request For Proposal ("Intensive Foster Care Services RFP")** means the DCS Intensive Foster Care Services Request for Proposal to which the Contractor responded which was issued by the State on or after [insert applicable date]. The Intensive Foster Care Services RFP, all of its attachments, and any and all necessary supplemental Request(s) for Proposal(s) ("Supplemental RFPs") and attachments are incorporated by reference into this Contract.
- (15) **Juvenile Delinquent/Juvenile Status ("JD/JS")** has the meaning set forth in IC § 31-37-1, IC 31-37-2, 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) **Service Plan(s)** means the plan the Contractor develops and follows when providing services to the children and families referred to the Contractor pursuant to this Contract.
- (19) **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.
- (21) **Utilization Review** means reviews that analyze Contractor's capacity and resources to meet DCS' needs.

C. Assurances. The Contractor shall comply with all terms, provisions and conditions applicable to the Services it provides to the State pursuant to this Contract, including, but not limited to, [redacted], including all statements and provisions, and assurances made in conjunction with the Intensive Foster Care Services RFP and the Contractor's RFP Response, except to the extent that the terms of this Contract might specifically modify those statements,

provisions, and assurances. The assurances (“Assurances”) can be found at the following link (or any designated successor website):

[insert link]

These Assurances are incorporated by reference into this Contract.

Should any information detailed in the Provider or Service Narrative (Attachments B and C to the Intensive Foster Care RFP) submitted by Contractor conflict with the Service Standards, the requirements set forth in the Service Standards shall control.

D. Child Safety. All services (even individual services) are provided through the lens of child safety. It is the responsibility of the Contractor to understand the child safety concerns and protective factors that exist within the family. Continual assessment of child safety and communication with the Local DCS Office is required. It is the responsibility of the Contractor to report any safety concerns as required by IC § 31-33-5 *et seq.* to the DCS or a local law enforcement agency. All service plans must include goals that address issues of child safety and the protective factors. Monthly reports, as may be required below, must outline progress towards goals identified in the service plans.

E. Legal Appearances.

(1) 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 involved with this Contract, 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:

- a. Require Appearance(s) of its employees, former employees (if applicable), and subcontractors (the “Contractor's Staff”) as required by DCS whether or not a subpoena or written request (including email) is sent.
- b. 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;
- c. Provide contact information for those subpoenaed, if available;
- d. Provide a substitute witness as requested by DCS;
- e. Timely copy and provide records and documentation; and
- f. Arrange for documentation of chain of custody on tests administered to clients as part of the Contractor’s services, if requested by DCS.

(2) 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).

- (3) Releases: 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 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.

However, the lack of such release does not excuse Contractor's obligation to attend all Appearances as required under this Contract.

- a. 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.
- b. 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, 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.
- c. 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.
- (4) Payment for Appearances/Testimony Rendered for DCS that Results from a Referral Pursuant to this Contract. When a member of the Contractor's Staff Appears at DCS' request, DCS shall pay per appearance per day per case. Notwithstanding the above, DCS shall never pay the Contractor for more than four (4) appearances per day per individual staff member (even if the Contractor Appears on behalf of more than four (4) clients/cases). Moreover, DCS shall pay only once for an individual staff member to be at a hearing even if such individual is there on behalf of more than one (1) DCS client or if there is a consolidated hearing for more than one (1) case.
- (5) The Contractor agrees to cooperate with the DCS local office attorney (or other authorized representative of DCS) during case preparation. Furthermore, the Contractor agrees to be prepared for all Appearances/Testimony and acknowledges that the court and/or deposition time payment (described directly above in paragraph (4)) will be standard and is not based on preparation, waiting time, or time on the stand and/or at the deposition. DCS will endeavor to schedule Appearances to accommodate the Contractor's Staff to the extent permissible by the court or otherwise.

- (6) 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.
- (7) 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.

F. Reports and Incident Reports:

- (1) Reports: 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, including submitting detailed service logs and/or outcome reports to KidTraks (or another database specified by DCS) as further detailed in the DCS Service Standards. The Contractor will provide all information reasonably 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.
- (2) Incident Reports: The Contractor has an affirmative duty under this Contract to disclose to the State whenever any Covered Personnel or subcontractor is involved in any incident with the family and/or child in the course of providing a service. "Incident" means any occurrence that endangers or may endanger the physical or mental health of a child, including but not limited to any altercations, condition, or event that would give rise to a mandatory report to the DCS hotline.

G. Monitoring: The State shall monitor and review the Contractor's delivery of services during the term of this Contract. The procedure that the State uses for monitoring the Contractor may change during the term of this Contract, and the Contractor will be notified of any changes in procedure. The procedure that the State uses for monitoring the Contractor may include, but not be limited to, the following:

- (1) Review of invoices/claims submitted by the Contractor for payment, in relation to the service categories and service rates approved by DCS in Attachment 2 and paid in accordance with the specifications outlined in this Contract;
- (2) Information received verbally (which will include a contemporaneous written summary of such information when possible and appropriate) or in writing from DCS concerning the Contractor's delivery of services requested or approved;
- (3) Information received verbally (which will include a contemporaneous written summary of such information when possible and appropriate) or in writing from service recipients, directly or through a DCS' local office, regarding services provided by the Contractor;
- (4) Review of the results of services provided in relation to the desired outcomes of those services as stated in the Intensive Foster Care Services RFP and the Contractor's RFP Response; and
- (5) Information contained in the reports and evaluations relating to the Contractor's delivery of services under this Contract.

As requested by DCS, the Contractor shall submit monthly written reports (at a minimum) to DCS (in the format requested by DCS) concerning the Contractor's service delivery and other issues pertinent to this Contract, as provided in the Intensive Foster Care Services RFP and/or as specified by DCS. The reports will be based only on documented information, which may include a contemporaneous written summary of information received verbally from a reporting source. The Contractor shall provide any additional reports requested by DCS, which may be more frequent than once per month.

- H. The Contractor agrees to utilize Continuous Quality Improvement practices to monitor service quality and delivery.
- I. Visitation and Transportation Records. As requested by DCS, the Contractor shall keep records of all visitation and transportation it provides as part of its delivery of services pursuant to this Contract. All such records shall be submitted to DCS upon request.
- J. Self-authenticating Records. As requested by DCS, the Contractor shall provide self-authenticating records to DCS.
- K. The Contractor hereby agrees that all actual cost items, e.g. translation services, and/or pass through cost items related to and/or part of the services it provides pursuant to this Contract must be at reasonable rates and not above the prevailing market rates.
- L. Disaster Plan: The Contractor shall send its disaster plan, as required by Section 10 [Compliance with Laws] and Section 23 [HIPAA Compliance] of this Contract, by email to DCS at [insert applicable DCS email address] within thirty (30) days of the effective date of this Contract.
- M. 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 DCS' ward in relation to any advertising, social media, 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 DCS' ward's school activities, or individual or group achievements or accomplishments. This Subsection 1.M. shall not apply to a DCS ward 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 DCS' ward if the required consent has been obtained.
- N. Release of Information: As detailed below in Section 12 [Confidentiality of State Information], any data, material, and information gathered, based upon, or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written approval of DCS.

The Contractor must receive prior DCS written approval to use data, material, or information obtained or disclosed pursuant to this Contract for research purposes.

If the Contractor is required to provide audio and/or video recordings of services delivered under this Contract to a service model owner for fidelity monitoring and/or certification, the Contractor shall:

- (1) submit a proposed release to DCS for approval;

- (2) obtain a signed (DCS approved) release from the parent/guardian prior to recording;
- (3) maintain a copy of the executed release in the client's file and upon request, deliver it to DCS; and
- (4) produce a copy of the recording in the event it is required pursuant to a discovery request.

O. Reports and Records Concerning Services.

- (1) In addition to any reports and case record documentation required by any other provisions of this Contract, the Contractor shall prepare, maintain, and timely provide to the State, upon request, any statistical reports, program reports, other reports, or other information requested by the State relating to the services provided by the Contractor pursuant to this Contract in the format designed by the Contractor and approved by the State or in the format requested by the State, including, but not limited to, reports/information incident to monitoring or evaluating performance by the Contractor of the services specified in this Contract, and/or any statistical and program reports as are required by any laws, regulations, or polices of the United States or the state of Indiana that are applicable to the use of funds paid to the Contractor pursuant to this Contract.

In order to comply with this paragraph (1), the Contractor shall, if requested by DCS, be required to submit reports in accordance with whatever frequency is requested by DCS (monthly, quarterly, or more or less frequent), with respect to services provided to a child or family referred to the Contractor for provision or delivery of services pursuant to this Contract or with respect to any other services performed or any other issues pertinent to this Contract. These reports must contain all of the information requested by the State and must conform to the format and content of the reporting procedure specified by the State.

- (2) This Subsection 1.O. applies to any services that the Contractor provides pursuant to this Contract, including, but not limited to, all services to a particular child or family referred to the Contractor pursuant to this Contract, including (if applicable) any services related to probation.
- (3) The Contractor shall cooperate with the State in any Utilization Review and shall, if requested, conduct or submit to any audit(s) requested by the State in addition to the audit following expiration or termination of this Contract required under Section 7 [Audits and Monitoring] of this Contract.
- (4) Prompt compliance, as determined by the DCS, by the Contractor with a request by the State to submit program and financial documentation during the term of this Contract is critical to this Contract. A failure of the Contractor to comply with any such request could result in immediate suspension of payments hereunder or termination of this Contract by the State.
- (5) In the event the contents of any report is considered deficient by the State, the State will so notify the Contractor in writing after receipt of the report. The notice will specify the nature of the deficiency and the corrective action or information needed. The Contractor shall submit to the State any revised or supplemental report within thirty (30) days after the date of the deficiency notice.

- (6) The Contractor shall maintain records as necessary or appropriate to document services provided pursuant to this Contract. Those records shall include, but not be limited to, documentation relating to, or the time and place of meeting with, persons served by the Contractor and the persons who attended those meetings and copies of any reports or other materials representing the work product of any services provided by the Contractor pursuant to this Contract.

P. Eligibility and Appeals.

- (1) The parties agree that the eligibility of any individuals who may be provided services pursuant to this Contract shall be determined in accordance with State service standards, DCS' policy, and federal eligibility criteria and operating procedures.
- (2) The State and the Contractor agree to maintain procedures and records in accordance with state and federal policies and regulations and to promptly address complaints and appeals between the parties and those of applicants for and recipients of services. Both parties agree to cooperate with the processing of any complaint or appeal.

Q. Delivery of Documents, Files, Data, Studies or Reports to the State Upon Termination or Expiration of this Contract.

Upon expiration or termination of this Contract, 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, shall be delivered to the State. The State may require the transfer of records, documents, or supplies to its own offices or to a designated successor.

R. Responsibilities for a Child in Foster Care.

- (1) Quality of Foster Care.
 - a. Training: The Contractor will ensure that each foster parent it utilizes for the Services under this Contract is appropriately trained: (i) as is required for licensure; and (ii) in accordance with the Service Standards and 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 and in the Service Standards. 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.R.(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 (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 [Consideration] of this Contract.

- b. Expenditures made by the Contractor for additional travel as described in Section 2 [Consideration] 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.

- (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/doc/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 10th 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) 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.

- (10) 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 Case Plan's goal.
- (11) 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.
- (12) 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.
- (13) Responsibilities for Behavioral Health Services.
- a. 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 Family Case Manager ("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 2 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.

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

- (14) Older Youth Services. Contractor shall comply with the relevant DCS Older Youth Services ("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.

S. 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) 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.

(6) 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.

(7) 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.

- (8) 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.
- (9) 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.

T. 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 2 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. 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 2 will control. Counseling or therapy services per Subsection 1.R.(13) 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 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 abide by all discharge planning requirements set out in the Service Standards.
- (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.

- (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) and the Service Standards. 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 Service Standards and LCPA Guidelines for Blended and Enhanced Caseloads, available at <https://www.in.gov/dcs/placement> or successor link.

U. 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 by the DCS. 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.R.(9) above, the Placing Agency will work diligently with the Contractor to locate another appropriate placement for the Child.

2. Consideration.

A. The Contractor will be paid for its delivery of services as provided in this Contract (including any exhibits attached hereto), the Intensive Foster Care RFP, and the Contractor's RFP Response, in accordance with the service category and service rates approved by DCS and in **Attachment 2** paid in accordance with specifications outlined above in Section 1 and all other applicable provisions of this Contract, including Section 37 [Payments and Fiscal Requirements] of this Contract.

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 Service Standards.

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 OYS (formerly Independent Living Services) are included in the Administrative Payment to Contractor and are set out in subsection 1.R.(14) 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.S. and 1.T. of this Contract based on the Contractor's approved rates as set forth in the current **Attachment 2** 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.H. 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), 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. **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.
- F. **Billable Units and Pass-through Rate.** For performing the duties set forth above and the services identified in **Attachment 2** of this Contract, the Contractor shall bill the DCS in accordance with the Billable Units section of the Service Standards. The Contractor shall pay the pass-through rate to the foster family as set out in the Billable Units section of the Service Standards.
- G. Payment to the Contractor will be subject to the following conditions:
- (1) Timely completion and submission to the State of the information required for any requisite reports and evaluations necessary to monitor services or programs and outcomes, as required in Section 1 of the Contract.
 - (2) Timely completion and submission to the DCS of monthly (or more frequently) written reports relating to specific children and families referred to the Contractor for services or relating to other issues pertinent to this Contract, as required by Section 1.O. of this Contract.
 - (3) Satisfactory completion and submission to the State of any applicable work product or other deliverable, as specified in this Contract or **Attachment 2**, the Intensive Foster Care Services RFP, the Contractor's RFP Response, or in this Contract itself, for services that are provided to a particular child or family and for any general services that are not provided to a particular child or family.
 - (4) Timely resolution of any issues related to Department of Revenue ("DOR") or Department of Workforce Development ("DWD"). The Contractor acknowledges that this Contract cannot proceed while any DOR or DWD "holds" exist.
 - (5) The Contractor must bill any available payment source, including, but not limited to, Medicaid, Medicare, and/or private insurance, prior to submitting a properly prepared invoice/claim to DCS.
- H. 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.

I. Interpretation, Translation, and Sign Language Services.

- (1) The location and cost of interpretation, translation, and sign language services are the responsibility of the Contractor.
- (2) If the translation, sign language, or interpretation service is needed in the delivery of the Services referred, the DCS will reimburse the Contractor for the cost of the interpretation, translation, or sign language service at the actual cost of the service to the Contractor.
- (3) The referral from DCS must include the request for interpretation, translation, or sign language services and the agency's invoice(s) for these services must be provided when billing DCS for the service.
- (4) Providers may use DCS contracted agencies for interpretation, translation, or sign language services and request that they be given the DCS contracted rate, but this is not required.
- (5) The Provider is free to use an agency or persons of their choosing as long as the interpretation, translation, or sign language service is provided in an accurate and competent manner and billed at reasonable rates and not above the prevailing market rates.

J. By signing this Contract, the Contractor hereby acknowledges that the service components and service rates approved by DCS and in **Attachment 2** and paid in accordance with the specifications set out in this Contract are established rates between DCS and the Contractor and the Contractor shall not request a revision of such rates after execution of this Contract and/or attempt to include a reservation of rights relating to the amount of the service rates in this Contract or otherwise.

3. **Term.**

This Contract shall be effective for a period of [REDACTED] or performing the duties set forth above. It shall commence on [REDACTED], and shall remain in effect through [REDACTED].

4. **Access to Records.**

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.

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 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 (1) party.
- B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the

State's prior written consent. 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.

- C. 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. It shall be the responsibility of the Contractor to ensure all subcontractors have the required background checks completed as set forth in Section 53 [Criminal and Background Checks] below. 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 the purposes of this Contract. However, if it is determined 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 of funds provided by the State pursuant to this Contract, which complies with 2 C.F.R. 200.500 *et seq.* Such audit shall be of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State.

In addition, the State considers the Contractor to be a "vendor," for purposes of this Contract. However, if required pursuant to the applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations), following the expiration of this Contract, the Contractor shall arrange for a financial and compliance audit of funds provided by the State pursuant to this Contract. Such audit is to be conducted by an independent public or certified public accountant (or as applicable, the Indiana State Board of Accounts), and performed in accordance with the Indiana State Board of Accounts publication entitled "Uniform Compliance Guidelines for Examination of Entities Receiving Financial Assistance from Governmental Sources," and applicable provisions of the Office of Management and Budget Circular A-133 (Audits of States, Local Governments, and Non-Profit Organizations). The Contractor is responsible for ensuring that the audit and any management letters are completed and forwarded to the State in accordance with the terms of this Contract. Audits conducted pursuant to this paragraph must be submitted no later than nine (9) months following the close of the Contractor's fiscal year. The Contractor agrees to provide the Indiana State Board of Accounts and the State an original of all financial and compliance audits. Such audit shall be of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or subsidiary

corporation of the Contractor, except to the extent such an expanded audit may be determined by the Indiana State Board of Accounts or the State to be in the best interests of the State. The audit shall include a statement from the Auditor that the Auditor has reviewed this Contract and that the Contractor is not out of compliance with the financial aspects of this Contract.

The Contractor and its subcontractors shall permit all examinations and shall generate and maintain all documentation necessary to comply with all audit requirements of this Contract.

- C. In addition to an independent audit completed in accordance with paragraph 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: (i) outcome tracking (including, but not limited to, outcome tracking described in Section 1 [Duties of the Contractor] of this Contract); (ii) quality review of the services provided by the Contractor pursuant to this Contract; and/or (iii) conducting any other program or service audits of the Contractor.
- (1) The Contractor shall, upon written demand by the State, 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.
 - (2) 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.
 - (3) 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 (including its exhibits/attachments).
 - (4) The parties agree that any authorized employee or representative of the State or the federal government of 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 provide photocopies, 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 provide photocopies when requested and ensure the cooperation of its employees, officers, board members, and subcontractors in any review, audit, or inspection conducted by a governmental agent.
 - (5) Following any State monitoring visit to the Contractor, 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 a reasonable period of time, as determined by the State, 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 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.

The Contractor hereby acknowledges and agrees that DCS may, in its discretion, conduct monitoring reviews of the Contractor, pursuant to this Section 7(C) of this Contract, for purposes including outcome tracking, quality review of services, and conducting any other program or service audits of the Contractor. The State may conduct such reviews with on-site monitoring or by requesting supporting documentation from the Contractor. Monitoring review activities conducted by DCS may include, but are not limited to, review of the Contractor's program and personnel policies and procedures, service planning activities, caseload ratios, family needs assessments, training and development programs and policies, adequacy of supervision, continuous quality improvement processes, and any documentation in support thereof.

- D. In the event the Contractor is performing services under this Contract that require the Contractor, an employee, and/or subcontractor to maintain any credentials or certification, the State may, in its discretion, require an audit be completed either by the State or the applicable credentialing or certifying organization.
- E. As required, the Contractor shall timely file an "Entity Annual Report" (Form E-1) with the State and the Indiana State Board of Accounts.
- F. Independent Financial Audits: The Contractor shall provide a copy to DCS of any independent financial audit conducted for the Contractor. A copy of the financial audit shall be provided to DCS within thirty (30) days of the Contractor's receipt of the written audit documents.

8. Authority to Bind the 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 – Modified.

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. With the exception of the modification procedures set forth in Section 31, 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 (Title IV-E and Title 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. Before this Contract may be moved through the State signature process, it must pass review by the Department of Workforce Development ("DWD") and the Department of Revenue ("DOR"). The Contractor acknowledges that this Contract cannot proceed while any DOR or DWD "holds" exist. Thus, if the Contractor has unpaid unemployment insurance or unpaid taxes to the State, this Contract will be held until these issues are resolved.
- D. The Contractor certifies by entering into this Contract that neither it nor its principal(s) are 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.
- E. 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. 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) that potentially threatens/endangers the life, health, or safety of any of DCS' wards, 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) pending an investigation into the report.
- F. 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.
- G. 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.
- H. 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.

- I. 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 DCS Deputy Director of Child Welfare Services and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations, as well as in accordance with all applicable DCS Service Standards and all other specifications set forth above in Section 1 [Duties of Contractor] and in the other provisions of this Contract. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract (including, but not limited to, any applicable accreditation and/or service standards and all specifications set forth above in Section 1 [Duties of Contractor]), or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of State Information – Modified.

- A The Contractor understands and agrees that data, materials, and information disclosed to the Contractor, including, but not limited to, services recipient information received by the Contractor or its subcontractors in administering the terms and provisions of this Contract, may contain confidential and protected information. The Contractor covenants that data, material and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.
- B 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 the Contractor, the 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.

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 – Modified.

- 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, including a review of information included at <http://www.oig.hhs.gov/> and <https://www.sam.gov/portal/public/SAM/> (and any designated successor websites), 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 – Modified.

- 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 a party to this Contract is not satisfied with the progress toward resolving a dispute, the party must notify in writing the other party of this dissatisfaction. Upon written notice, the parties have ten (10) working days, unless the parties mutually agree to extend this period, following the notification to resolve the dispute. If the dispute is not resolved within ten (10) working days, a dissatisfied party shall submit the dispute in writing according to the following procedure:
- D. 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.
- 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 D. 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 of Indiana 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 19 of the Contract, the term “employee” includes any persons working on 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. The Contractor agrees that 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 – Modified.

- A. It is understood and agreed by the parties that all obligations of the State are contingent upon the availability and continued appropriation of state and federal funds, and in no event shall the State be liable for any payments in excess of available appropriated funds.

- B. If DCS makes a written determination that federal and/or state of Indiana funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be immediately canceled upon the Contractor's receipt of a written notice from DCS specifying such determination. Such written notice shall be sent in accordance with the specifications set forth in Section 34 [Notice to Parties] of this Contract. A determination by DCS that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
- C. As required by Financial Management Circular 2007-1 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 the 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 paragraph 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) [Notice to Parties] 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 of the Contract; 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].

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 – Modified.

- A. 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.
- B. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.
- C. The Contractor certifies and agrees that the services the Contractor provides under this Contract will be performed in accordance with the following guidelines:
 - (1) **Behavioral control** - The Contractor will be responsible to direct and control its staff with respect to how to carry out its duties under this Contract including:
 - a. monitoring or providing training on how to perform services and
 - b. instructions on:
 - when and where to do the work;
 - what tools or equipment to use;

- what workers to hire or to assist with the work;
- where to purchase supplies and services;
- what work must be performed by a specified individual; and
- what order or sequence to follow.

(2) **Financial control** - In carrying out its duties hereunder, the Contractor will be responsible for:

- a. all business expenses incurred;
- b. any facilities or equipment it requires;
- c. managing its resources to meet obligations to the State and any other parties;
- d. all employment or contract issues with its staff; and
- e. managing any fluctuations in the cost of providing services.

(3) **Type of relationship** - The Contractor’s relationship with the State:

- a. is controlled by this Contract;
- b. includes no benefits other than the consideration paid for services rendered;
- c. includes no promise of future agreements; and
- d. addresses only one aspect of the State's overall mission.

26. Indiana Veteran Owned Small Business Enterprise Compliance.

Award of this Contract was based, in part, on the Indiana Veteran Owned Small Business Enterprise (“IVOSB”) participation plan, as detailed in the IVOSB Subcontractor Commitment Form, commonly referred to as “Attachment A-1” in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by IDOA’s Division of Supplier Diversity and may require an amendment. It is the State’s expectation that the Contractor will meet the subcontractor commitments during the Contract term. The following certified IVOSB subcontractor(s) will be participating in this Contract: **[Add additional IVOSBs using the same format.]**

IVOSB	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT

Briefly describe the IVOSB service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:

A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana’s subcontractor payment auditing system), emailed to IndianaVeteransPreference@idoa.IN.gov, or mailed to IDOA, 402 W. Washington Street, Room W-462, Indianapolis, IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing IVOSB procurement and may result in sanctions allowable under 25 IAC

9-5-2. Requests for changes must be submitted to IndianaVeteransPreference@idoa.IN.gov for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to certified IVOSB subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: www.in.gov/idoa/mwbe/payaudit.htm. The Contractor may also be required to report IVOSB certified subcontractor payments directly to the Division of Supplier Diversity, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Contractor's failure to comply with the provisions in this clause may be considered a material breach of the Contract.

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 \$1,000,000 per occurrence and \$2,000,000 in the aggregate 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 \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The State is to be named as an additional insured on a primary, non-contributory basis.
- (3) Property damage insurance in an amount sufficient to provide coverage for any loss of property used by the Contractor in connection with services provided under this Contract, not less than \$100,000 in the aggregate.
- (4) Professional Liability, also known as Errors and Omissions Insurance, for those Contractors required to hold a professional license by the Indiana Professional Licensing Agency with limits not less than \$1,000,000 per cause of action and \$2,000,000 per occurrence. This is coverage available to pay for liability arising out of the performance of professional or business related duties, with coverage tailored to the needs of the specific profession. 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.
- (5) Fiduciary liability 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 with limits no less than \$700,000 per cause of action and \$5,000,000 in the aggregate.

- (6) Valuable Papers coverage, if applicable, with an Inland Marine Policy Insurance with limits sufficient to pay for the re-creation and reconstruction of such records.
- (7) Surety or Fidelity Bond(s) if required by statute or by the agency.
- (8) Cyber Liability coverage addressing risks associated with electronic transmissions, internet, networks, and informational assets having limits of not less than \$1,000,000 in the aggregate.

The Contractor shall provide proof of such insurance coverage by tendering to the State representative listed in Section 34(A)(1) [Notice to Parties] 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 of Indiana 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 representative listed in Section 34(A) (1) [Notice to Parties] before commencement of this Contract.

29. Key Person(s).

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.

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.R.(13), 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 2**. 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 2**, 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 2**, 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.

Award of this Contract was based, in part, on the Minority and/or Women’s Business Enterprise (“MBE” and/or “WBE”) participation plan as detailed in the Minority and Women’s Business Enterprises Subcontractor Commitment Form, commonly referred to as “Attachment A” in the procurement documentation and incorporated by reference herein. Therefore, any changes to this information during the Contract term must be approved by Division of Supplier Diversity and may require an amendment. It is the State’s expectation that the Contractor will meet the subcontractor commitments during the Contract term.

The following Division of Supplier Diversity certified MBE and/or WBE subcontractors will be participating in this Contract: **[Add additional MBEs and WBEs using the same format.]**

MBE or WBE	COMPANY NAME	PHONE	EMAIL OF CONTACT PERSON	PERCENT
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Briefly describe the MBE and/or WBE service(s)/product(s) to be provided under this Contract and include the estimated date(s) for utilization during the Contract term:



A copy of each subcontractor agreement must be submitted to the Division of Supplier Diversity within thirty (30) days of the effective date of this Contract. The subcontractor agreements may be uploaded into Pay Audit (Indiana’s subcontractor payment auditing system), emailed to MWBECompliance@idoa.IN.gov, or mailed to Division of Supplier Diversity, 402 W. Washington Street, Room W-462, Indianapolis IN 46204. Failure to provide a copy of any subcontractor agreement may be deemed a violation of the rules governing MBE/WBE procurement and may result in sanctions allowable under 25 IAC 5-7-8. Requests for changes must be submitted to MWBECompliance@idoa.IN.gov for review and approval before changing the participation plan submitted in connection with this Contract.

The Contractor shall report payments made to Division of Supplier Diversity certified subcontractors under this Contract on a monthly basis using Pay Audit. The Contractor shall notify subcontractors that they must confirm payments received from the Contractor in Pay Audit. The Pay Audit system can be accessed on the IDOA webpage at: www.in.gov/idoa/mwbe/payaudit.htm. The Contractor may also be required to report Division of Supplier Diversity certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division of Supplier Diversity.

The Contractor’s failure to comply with the provisions in this clause may be considered a material breach of the Contract.

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 will be sent by E-mail or first class U.S. mail service to the following addresses, unless otherwise specifically advised.

(1) Notices to the State shall be sent and/or e-mailed to:

[Contact Name]

[Contact Title]

Indiana Department of Child Services
302 W. Washington Street, Room E306, MS 47
Indianapolis, IN 46204

[E-mail Address]

(2) Notices to the Contractor shall be sent and/or e-mailed to:

[Individual's Name]

[Individual's Title]

[Contractor Name]

[Address Line 1]

[Address Line 2]

[E-mail Address]

B. Notice of any change in the person or address to whom notices should be sent and/or e-mailed, as specified in paragraph A of this Section, shall be given to the other party in the manner provided in paragraph 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 shall be resolved by giving precedence in the following order: (1) this Contract; (2) [only if applicable] any written notices given by the State to the Contractor (including any attachments thereto) pursuant to Section 31 [Merger & Modifications] of this Contract; (3) [only if applicable] the most current form of DCS' Service Standards, DCS' Child Welfare Principles, and the Assurances (which are described in Section 1 [Duties of Contractor] of this Contract); (4) attachments prepared by the State; (5) [only if applicable] RFP# _____; (6) [if applicable] Contractor's response to RFP# _____, and (7) attachments prepared by the Contractor. All attachments, and all documents referred

to in this paragraph, are hereby incorporated fully by reference.

36. Ownership of Documents and Materials – Modified.

- 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. 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.
- C. The Contractor shall grant the State shared access to all documents, including child files, records, programs, data, film, tape, articles, memoranda, and other materials related to this Contract. The Contractor shall provide the State full, immediate, and unrestricted access to such documents and materials during the term of this Contract and as necessary thereafter.
- D. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to any of the above-referenced materials developed for or supplied by the State and/or 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 also be responsible for preserving and protecting the ownership and property rights of the State in all work in progress and other property to which the State is entitled hereunder, while the property is in the control or custody of the Contractor.

37. Payments and Fiscal Requirements – Modified.

- A. All payments shall be made in 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. 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 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 paragraph 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 must be submitted with appropriate documentation attached showing completion of the service units for which the Contractor is requesting payment under this Contract and the applicable referral form. Documentation shall specify the program and services provided for each client for whom the claim is submitted, the name of the client, the dates on which the services were provided, and the payment rate applicable to the client, program, and services provided based on the rates established and approved for the particular program services as provided in this Contract (including any exhibits/attachments thereto or web links referenced therein).
- E. As described in Section 2.G.(5), the Contractor must bill any available payment source, including, but not limited to, Medicaid, Medicare, and/or private insurance, prior to submitting a properly prepared invoice/claim to DCS.
- F. A properly prepared invoice/claim must be submitted to DCS within ninety (90) calendar days after the date services are provided or costs incurred pursuant to this Contract. 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, Medicare, or private insurance 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, Medicare or private insurance 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, Medicare, or private insurance approved the claim.
- G. Approval and payment of final invoices/claims will be conditioned upon receipt and approval of all State-required documentation. As State claiming or recordkeeping systems change, the Contractor may need to modify its systems to be compatible with State systems. The State will provide reasonable advance notice of any such changes.
- H. If the Contractor is being paid in advance for the maintenance of equipment software or a service as a subscription, then pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to fully provide or perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

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.O. and Subsubsection 1.R.(8) of the Contract. **[Modified]**

40. Public Record.

The Contractor acknowledges that the State will not treat this Contract as containing confidential information and 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 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.

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.

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.
- (2) 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.
- (3) 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 of this Contract. 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.
- (4) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

B. Termination for Endangering Life, Health, or Safety of Any Person. If the State determines that any breach of this Contract 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 1.O. (Reports and Records Concerning Services); Section 7 (Audits and Monitoring); Section 10 (Compliance with Laws); Section 15 (Default by State); Section 17 (Drug-Free Workplace Certification); Section 18 (Employment Eligibility Verification); Section 20 (Force Majeure); Section 21 (Funding Cancellation); Section 23 (HIPAA Compliance); Section 28 (Insurance); Section 30 (Licensing Standards); Section 33 (Nondiscrimination); Section 45 (Termination for Convenience); Section 50 (Conflict of Interest); 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 with the exception, as set forth above in Section 13(D) and only if applicable, that the State shall reimburse the Contractor 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). 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 except as provided in Section 13(D).

47. Travel – Modified.

- A. Travel specified in 465 IAC 2-17-12 is included in the maintenance payment. DCS will only pay 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.
- 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.

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 it provides pursuant to 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. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract and/or those individuals assigned to provide any of the services pursuant to this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

50. Conflict of Interest – Added.

A. Paragraphs B through E of this Section apply if the Contractor is an individual, a corporation that issues stock to individuals representing ownership shares of the corporation, a partnership, a limited liability company, or any other form of business organization or association the members or owners of which could receive a personal financial benefit or increase in personal net worth attributable to income or profits received by the organization (exclusive of compensation in the form of salary or wages paid for services rendered to the organization). This Section, other than Paragraph F, does not apply if the Contractor is a nonprofit corporation, a school or university that is not organized or operated for the financial benefit or profit of individual owners, or an agency of a political subdivision or other governmental organization.

B. As used in this Section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party" means:

- (1) The individual executing this Contract;
- (2) An individual who has an interest of three percent (3%) or more of the Contractor, if the Contractor is not an individual; or
- (3) Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- C. The Department may cancel this Contract without recourse by the Contractor if any interested party is an employee of the state of Indiana.
- D. The Department will not exercise its right of cancellation under paragraph C above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the state of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of state of Indiana employees. The Department may take action, including cancellation of this Contract, consistent with an opinion of the Commission obtained under this Section.
- E. The Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the state of Indiana. The obligation under this Section extends only to those facts which the Contractor knows or reasonably could know.
- F. The Contractor acknowledges and agrees that no employee, agent, representative, or subcontractor of the Contractor who may be in a position to participate in the decision-making process of the Contractor or its subcontractors may derive an inappropriate personal or financial interest or benefit from any activity funded through this Contract, either for himself or herself or for those with whom he or she has family or business ties.

51. **Fees – Added.**

The Contractor and its subcontractors shall impose no fees upon the recipients of any services provided through this Contract except as explicitly authorized by the State.

52. **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.

53. **Criminal and Background Checks – Added.**

To ensure Contractor remains in compliance with the Contract, the Contractor shall be responsible for modifying its practices to comply with all applicable federal laws, state of Indiana laws, administrative letters, and DCS 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, who has or will have electronic or physical access to children's records or direct contact with children on a regular and continuing basis or any contact when a child(ren) is/are alone or only with the Provider's staff in connection with performance of any services or activities pursuant to this Contract ("Covered Personnel"). To the extent applicable, the Contractor (referred to in this Section as "Provider") shall conduct all criminal history and background checks required by law, this Contract, and the applicable DCS' policies, including those implemented by Administrative Letter. All required checks must be completed and all outstanding issues resolved *prior to* the Provider submitting this Contract for State signature. The 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), and the Provider shall maintain records of information it gathers and receives on Covered Personnel checked pursuant to this Section. The applicable laws and DCS' policies and practices are updated periodically, and the Provider shall comply with those current as of the time the Provider executes this Contract, adds Covered Personnel, renews this Contract, or reaches the anniversary date of commencement of a multi-year agreement. Upon request, DCS will furnish the Provider with information on updates and any changes in policy or procedure. The current procedure requires the Provider to conduct the following checks:

- (1) A1 Level Covered Personnel. Personnel employed or volunteering in a capacity in which the subject of the check has the expectation of direct contact with children, in connection with performance of any service or activity pursuant to the Contract with DCS.
 - a. Note: Personnel designated as A2 Level Covered Personnel could become an A1 Level Covered Personnel at any time as duties or responsibilities change to include A1 Level Covered duties, services, or activities.
- (2) Direct Contact with Children. For purpose of A1 and A2 Level Covered Personnel definitions, direct contact with children means any direct contact with a child, regardless of whether another adult or a parent is present.
- (3) A2 Level Covered Personnel. Personnel employed or volunteering in a capacity in which the subject of the check has the expectation of electronic or other access to children's child welfare or DCS information, in connection with performance of any services or activity pursuant to the Contract with DCS.
 - a. Note: Personnel designated as not being A2 Level Covered Personnel could become A2 Level Covered Personnel at any time as duties or responsibilities change to include A2 Level Covered duties, services, or activities.
- (4) Other Access to Information. For purposes of the A2 Level Covered Personnel definition, other access to a child's child welfare or DCS information includes both access to physical records and access to overhear information about a child's child welfare or DCS information.

- 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 and verify 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 such documentation related to these Required Checks as DCS requests.
- E. 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 Central Office 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 contained in any report that it receives from the Federal Bureau of Investigation through the Indiana State Police. 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.
- H. Upon request, DCS will assist the Provider in clarifying the requirements of this Section.

54. Purchase and Disposal of Property - Added

- A. As used in this Contract, “equipment” means tangible, non-expendable, personal property having a useful life of more than one (1) year and having a unit acquisition cost of \$5,000.00 or more. The Contractor will not expend any funds provided by the State pursuant to this Contract for the purchase or maintenance of equipment.
- B. As used in this Contract, “supplies” includes all tangible personal property other than equipment that is purchased or acquired by the Contractor through expenditure of funds provided to the Contractor by the State pursuant to this Contract. If the Contractor has in its possession, upon expiration or termination of this Contract, unused supplies having a total aggregate fair market value exceeding \$5,000.00, the Contractor may retain those supplies for use in any continuation of the program or activities funded pursuant to this Contract that is supported by a federal funding source, or any other program or activity that is supported by a grant or contract from the State that is funded in whole or in part by a federal agency.
- C. If all or any portion of supplies having a total aggregate fair market value at expiration or termination of this Contract exceeding \$5,000.00 are not needed or used for a purpose described in paragraph B above, the Contractor may retain those supplies for other uses or sell them. In either case, the Contractor shall reimburse the State for its proportionate share of the value or sale proceeds of the supplies, in the amount determined in accordance with 45 CFR 74.34(g).
- D. If the total aggregate fair market value of supplies in the Contractor’s possession upon expiration or termination of this Contract is \$5,000.00 or less, the Contractor may retain or dispose of those supplies for its own use, without further obligation to account to the State for their disposition or proceeds thereof.
- E. The Contractor shall retain all records relating to the purchase and disposal of supplies during the term of this Contract and for a period of four (4) years from the date the Contractor submits any final financial status or final program report to the State, or one (1) year from the resolution of any outstanding administrative, program, or fiscal audit question, or legal action, whichever is later.

55. **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.

56. **Religious or Political Activities – Added.**

- A The State and the Contractor agree that services provided pursuant to this Contract shall be non-sectarian in nature and that religious activities shall not be included 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.

57. **Buy American – Added.**

The State and the Contractor agree that, to the greatest extent applicable, all equipment and products purchased with funds provided by the State pursuant to this Contract shall be American-made.

58. **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 1.O. Reports and Records Concerning Services; Section 1.P. Eligibility and Appeals; Section 1.Q. Delivery of Documents, Files,

Data, Studies or Reports to the State Upon Termination or Expiration of this Contract; 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 55. 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.

59. 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:

- 5 Assignment; Successors; and Subcontracting – modified;
- 7 Audits and Monitoring – modified;
- 9 Changes in Work – modified;
- 10 Compliance with Laws – modified;
- 11 Condition of Payment – modified;
- 12 Confidentiality of State Information – modified;
- 13 Continuity of Services – modified;
- 14 Debarment and Suspension – modified;
- 16 Disputes – modified;
- 19 Employment Option – modified;
- 21 Funding Cancellation – modified;
- 23 HIPAA Compliance – modified;
- 25 Independent Contractor; Workers' Compensation Insurance – modified;
- 28 Insurance – modified;
- 30 Licensing Standards – modified
- 34 Notice to Parties – modified;
- 35 Order of Precedence; Incorporation by Reference – modified;
- 36 Ownership of Documents and Materials – modified;
- 37 Payments and Fiscal Requirements – modified;
- 39. Progress Reports – modified;
- 46 Termination for Default and Termination or Suspension for Additional Reasons – modified;
- 48 Waiver of Rights – modified;
- 49 Work Standards – modified;
- 50 Conflict of Interest – added;
- 51 Fees – added;
- 52 Environmental Tobacco Smoke – added;
- 53 Criminal and Background Checks – added;
- 54 Purchase and Disposal of Property – added;
- 55 Lobbying Activities – added;
- 56 Religious or Political Activities – added;
- 57 Buy American – added; and
- 58 Survival – added.

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?

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]
By: _____

Indiana Department of Child Services
By: _____

Name and Title, Printed

Name and Title, Printed

Date: _____

Date: _____