

**SAMPLE**  
**COMMUNITY MENTAL HEALTH CENTER**  
**PROFESSIONAL SERVICES CONTRACT**

**Contract #**

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

**1. Duties of Contractor.**

A. Purpose & Background: The purpose of this Contract is for Contractor to provide behavioral health services and other family and child welfare services as referred by DCS and probation including, but not limited to, Medicaid Rehabilitation Option (“MRO”) and Medicaid Clinic Option (“clinic option” or “MCO”) services (the “Scope of the Contract”). Referrals for such services will be made according to the needs of children and families involved with DCS, whether by an informal adjustment (IA), a child in need of services (CHINS) case or a Children’s Mental Health Initiative (CMHI) case and children and families involved in juvenile delinquency or juvenile status cases (JD/JS clients) which includes any JD/JS IAs.

Pursuant to 440 IAC 4.1-1-1(4), a “Community mental health center or “center” 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.” Because of the unique nature of the CMHC’s exclusive geographical service area, its ability to provide a “continuum of care” [as defined at 440 IAC 4.1-1-1(7)] throughout the period of the open referral and continuing after the referral has closed, and its ability to bill Medicaid for MRO and MCO services, CMHCs are an integral part of DCS’ ability to provide comprehensive child welfare services across the state of Indiana in accordance with its State Plan.

B. Due to the specific nature of child welfare services and all applicable statutory time frames under which DCS operates, it is the expectation of DCS that DCS referred clients will receive priority screenings/assessments and prompt initiation of services in order to fulfill DCS’ mission to protect children from abuse and neglect and work to ensure their financial support. Therefore, in order to accomplish the above-referenced purpose, the Contractor will provide quality best practice services set out in more detail herein below and in accordance with the following (all of which are hereby incorporated by reference):

- (1) All applicable Medicaid requirements;
- (2) the most current version of DCS’ service standards applicable to the services provided by the Contractor pursuant to this Contract (the “Service Standards”), as such Service Standards are modified/updated from time to time by DCS but always available in their most current form at the following link (or any designated successor website):

<http://www.in.gov/dcs/3159.htm>

- (3) the most current version of DCS’ Principles of Child Welfare Services (“DCS’ Child Welfare Principles”), as such DCS’ Child Welfare Principles are modified/updated from

time to time by DCS but always available in their most current form at the following link (or any designated successor website):

<http://www.in.gov/dcs/3159.htm>

*Please note:* All services (even individual services) are provided through the lens of child safety. As part of service provision, 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, per state statute, IC § 31-33-5-1. All service plans should include goals that address issues of child safety and the family's protective factors. The monthly reports must outline progress towards goals identified in the service plans;

- (4) the Contractor's Response to the Community Mental Health Center RFP (which includes the Contractor's Response to any necessary supplemental Request(s) for Proposal(s)), as refined based on any subsequent Contractor agreement to services or rates) (the "Contractor's RFP Response"), which was submitted by the Contractor in accordance with the specifications of the Community Mental Health Center RFP; and
- (5) the summary list of all of the specific service(s) provided by this particular Contractor and the applicable service rates approved by DCS which are detailed in the services and rates schedule, **Attachment 1**, (which is attached hereto and hereby incorporated by reference) and paid in accordance with the specifications outlined in paragraph D below.

However, should any information detailed in the "Service Narrative" (Attachment D to the Community Mental Health Center RFP) submitted by Contractor conflict with the Service Standards, the requirements set forth in the Service Standards shall control.

C. The Contractor agrees to 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, service categories, objectives, DCS' Service Standards applicable at the time services are rendered, and DCS' Child Welfare Principles, as set forth above in paragraph B of this Section, and the following assurances made in conjunction with the Community Mental Health Center 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):

<http://www.in.gov/dcs/3159.htm>

(1) In recognition of DCS' overall responsibility for case management and its unique knowledge of the children and families, CMHC agrees to collaborate with DCS and its assigned family case manager ("FCM") in determining specific staff for services. CMHC acknowledges that it is the DCS case plan and the child and family team meeting ("CFTM") which will determine all non-MRO services. However, DCS acknowledges CMHC responsibility for coordination and case management related to medically necessary behavioral health services. DCS service standards will control for any services not billed to Medicaid. However, even for Medicaid-eligible services,

CMHC agrees that DCS standards will prevail when compatible with Medicaid service standards. For example, “home-based” services for DCS purposes are to be delivered primarily in the home even though Medicaid may define “home-based” as services delivered away from the clinic, but not necessarily in the home. CMHC also agrees that it will follow DCS’ best practices. This may require services such as sending a staff member involved in the case to a child and family team meeting which may not be billable to Medicaid. DCS acknowledges that it will be responsible for payment of preapproved services not billable to Medicaid.

(2) DCS agrees to provide timely referrals, which may include verbal, e-mail, text or other non-formal referrals in emergency situations. Such referrals will be followed up with formal electronic or hard-copy referrals. CMHC agrees to provide timely care in accordance with DCS processes and protocols for service delivery. Parties acknowledge that client circumstances may affect scheduling of actual service delivery, but that CMHC will initiate contact and will follow through with services as soon as required by the service standards and as possible given client circumstances. Parties also acknowledge that DCS may have to make an alternate referral should a child or family be unavailable for the original service referred and that CMHC will only bill for referrals pursuant to those services which were actually rendered. CMHC will conduct clinical intake to determine diagnosis at the earliest opportunity unless DCS directs otherwise because of an emergency. For Medicaid eligible clients, CMHC will bill as crisis intervention as appropriate and with reference to 405 IAC 5-21.5-8 and the Indiana Medicaid Rehabilitation Option Provider Manual.

(3) For referrals made pursuant to this agreement, CMHC agrees to modify any policy restricting services for prior clients with unpaid bills; however nothing herein prohibits CMHCs from pursuing unpaid bills. CMHC also agrees to modify any agreements or understandings with other providers with respect to boundaries for service delivery as such understandings might limit or interfere with DCS referrals. CMHC will serve all clients referred by DCS irrespective of those policies.

(4) Contractor acknowledges that DCS may continue to refer clients to other providers for both Medicaid eligible and non-Medicaid eligible services as appropriate to its agency mission and the needs of the DCS population.

(5) Contractor agrees that it will hire or lease employees as necessary to deliver the Medicaid-eligible services available under this agreement and that it will hire staff or subcontract as necessary to deliver services which are not Medicaid-eligible but which are available hereunder. Contractor agrees that all expectations in this agreement apply equally to Contractor's staff whether they are regular employees, leased employees or subcontractors. Contractor agrees that the cost of such services to DCS, including administrative costs, will not exceed the rate DCS had paid for equivalent services under direct contracts.

(6) A key part of the CMHC's initial service to DCS will be to help determine the appropriate follow up service referrals to address the client's needs. This may be:

- represented in the service recommendation following an assessment for MRO;

- reflected in service recommendations following a diagnostic and evaluation or substance abuse assessment; or
- a recommendation for an assessment for MRO if the CMHC's CANS score for a child is three (3) or above or reveals a significant behavioral health need appropriate to request prior authorization for Medicaid services. CMHC will contact the DCS FCM to request an assessment for MRO if needed and will pursue approval for MRO services as client needs warrant. Also, CMHC will pursue PA if the CMHC identifies medical necessity and/or if there is a court order for services which could be covered by Medicaid.

(7) CMHC will pursue Medicaid eligibility determinations on all potentially eligible DCS clients, including adults where appropriate. CMHC may request assistance from the DCS Medicaid Eligibility Unit ("MEU") or any successor resource. Parties will develop and implement a process to avoid duplicate applications for Medicaid eligibility. DCS' FCMs will attempt to connect adult clients with CMHCs.

(8) CMHC agrees that it will consult with the Indiana Family and Social Services Administration ("FSSA") Office of Medicaid Policy and Planning ("OMPP") and with other resources as necessary to appropriately code services to ensure maximum Medicaid reimbursement.

(9) CMHC agrees to obtain prior authorization as required and to otherwise use its expertise to guide selection and delivery of services to ensure maximum reimbursement. Parties acknowledge that standard Medicaid Rehabilitation Option ("MRO") packages may be designed for clients with average needs, but that DCS clients may not fit that need level and may require more services. CMHC will advocate for approval of the level of client service it determines is actually necessary. CMHC may avail itself of any funding opportunities available through DCS or FSSA, respectively, for the cases for which each agency is responsible. DCS and CMHC agree to cooperate and to coordinate with FSSA's Division of Family Resources ("DFR") as necessary to facilitate application for Medicaid. CMHC agrees to first bill Medicaid for all Medicaid-eligible services for all Medicaid-eligible clients and to be responsible for compliance with all Medicaid rules and regulations concerning DCS' clients' treatment. CMHC will only seek payment from DCS for such Medicaid-eligible services if Medicaid has denied payment and appeals. CMHC will hold invoicing for clients whose Medicaid eligibility is pending. Once an eligibility determination is made, CMHC will bill Medicaid as described above, for those who are eligible. For those who are not Medicaid eligible, CMHC will bill DCS.

(10) CMHC agrees that it will assign experienced staff to DCS cases in order to maximize Medicaid reimbursement by:

- properly identifying crisis interventions;
- monitoring appropriate diagnoses;
- segregating Medicaid billable and non-billable components of services [*e.g.* certain recreation, education, transportation and employment services];
- managing details of service delivery (signatories for treatment plans, case load limitation, etc.);
- timely initiating and communicating with Managed Care Organizations regarding prior approvals; and

- timely (at least two weeks prior) notifying DCS of and initiating a redetermination necessary to continue services as patient needs dictate. CMHC should complete a new service recommendation at the 6 month mark when it completes its redetermination. This obligation applies to patients initially referred pursuant to this agreement, to those who were in services under a DCS case prior to this agreement and to those who were previously being served with no DCS involvement who later become involved with DCS. For those patients who were not DCS clients at the time of their initial treatment by CMHC, DCS will send a referral to initiate the Medicaid match and CMHC will send DCS a copy of the assessment supporting the services to be covered, but will not duplicate an assessment.

(11) For services with both Medicaid eligible and non-Medicaid eligible components, CMHC will bill the Medicaid eligible portion of services for reimbursement prior to billing DCS.

(12) Contractor may provide services based on both medical necessity and DCS' safety considerations. Contractor will split invoices in to those eligible for federal reimbursement and subject to state match and those which are not.

(13) CMHC agrees to bill all Medicaid-eligible services payable by DCS at the lesser of Medicaid rates or the agreed statewide DCS services rates for CMHCs. CMHC agrees to identify, file for and pursue reimbursement from private insurance as available. CMHC agrees to bill at statewide rates included on **Attachment 1** for all services which are not payable by Medicaid.

(14) Contractor may close client cases per Contractor protocols, but DCS may elect to leave a referral open on a case closed by Contractor should it anticipate the need for additional services. In any event, DCS will no longer be responsible for payment of services once the DCS case is closed.

D. As described above, the purpose of this Contract is to secure behavioral health and other child welfare services according to the needs of children and families involved with DCS, whether by an informal adjustment (IA), a child in need of services (CHINS) case or a Children's Mental Health Initiative (CMHI) case, and children and families involved in juvenile delinquency or juvenile status cases (JD/JS clients) which includes any JD/JS IAs.

The CMHC contracts are statewide, and invoices shall reflect those services available from CMHCs as described in **Attachment 1** hereto. Any changes to the 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.

The parties acknowledge that the Contractor may not have the staff or staff with the proper credentials to provide the complete array of services available under this Contract at the time this Contract begins and that the availability of certain services (such as one-hour crisis response) may vary on a county by county basis and over the term of the Contract. The Contractor explicitly agrees that it will only accept referrals for which it has adequate and properly credentialed staff at the time of the referral. The Contractor may be audited by DCS and/or Family and Social Services Administration's Division of Mental Health & Addiction ("DMHA") and/or the applicable credentialing or certification organization to ensure compliance. Furthermore, the Contractor explicitly agrees that it will comply with any required state licensing requirements (for itself and those of its employees) for the services performed under this Contract, as set forth in more detail in Section 30 [Licensing Standards]. The Contractor will provide DCS' central

office and the DCS Regional Coordinator for the areas in which it operates with timely updates of the services it is qualified to offer. The DCS Regional Coordinator and DCS Regional Manager will notify the Regional Service Councils of any changes to the services available within each region. Contractor acknowledges that DCS may refer cases as DCS' needs dictate and not solely based on proximity of the client to a particular CMHC. The Contractor agrees that its staff will provide services and supervision appropriate to their level of training and will document time accordingly.

Award of this contract is based on Contractor's strict compliance with the certification, training, and/or education requirements set forth in the Service Standards, regardless of Contractor's response in the Community Mental Health Center RFP.

E. Releases: The Contractor shall be required to have current releases for all DCS' clients and JD/JS clients for whom the Contractor's Staff **provides** or **has provided** services pursuant to this Contract with an expiration tied to closure of the relevant CHINS case or JD/JS case. If a case begins as an IA (informal adjustment), the expiration should 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 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. DCS has created certain consent and release forms to ensure consistency among providers and Contractor agrees to use such forms as long as they comply with all applicable legal requirements.

Contractor also agrees to seek such consent and release forms from all clients related to DCS cases regardless of whether DCS is payor. Should any clients refuse or be unable to execute the requested releases, Contractor will promptly notify DCS and provide documentation to DCS of such refusals or inability so DCS may seek a court order.

F. Appearances:

- (1) The Contractor agrees that the services provided under this Contract may require it 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 behavioral health and child welfare services, the parties acknowledge that any such Appearances may be long after the behavioral health and child welfare services referral has closed. However, the Contractor's obligation to testify will survive both the closure of the referral for behavioral health and child welfare services and the Contract. As stated above, it is Contractor's obligation under this Contract to have a current release for all DCS' clients and JD/JS clients, but the lack of such release does not excuse Contractor's obligation to attend all Appearances as required under this Contract.

**As part of these services, the Contractor shall:**

- (a) Require Appearance(s) of all its employees and subcontractors (the "Contractor's Staff") as required by DCS whether or not a subpoena is sent and, if related to or arising from the services rendered pursuant to this Contract;
- (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 rendered pursuant to 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) (described directly above in subparagraph (1)) and will pay for Appearances it requires and for which the Contractor's Staff Appears (in accordance with the specifications set forth below).
- (3) 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 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 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 detention, fact finding, permanency or termination of parental rights hearing. Contractor understands and agrees that testimony in court is an important aspect inherent to the performance of services under this Contract.

Pursuant to **Trial Rule. 45(F) Contempt:**

Failure by any person without adequate excuse to obey a subpoena served upon him may be deemed a contempt of the court from which the subpoena issued, or court of the county where the witness was required thereunder to appear or act. The attendance of all witnesses when duly subpoenaed, and to whom fees have been paid or tendered as required by law may be enforced by attachment.

DCS may pursue any and all appropriate relief in court and under this Contract, including but not limited to Section 16 and Section 45, in order to secure testimony of witnesses.

- (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 be prepared for all Appearances and acknowledges that the court and/or deposition time payment (described directly above in paragraph (5)) 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.
- (8) Compensation for attendance at CFTMs, travel, collateral contacts, reports and other preparation will be as addressed herein and/or as described in the service standards.

G. 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) for both MRO and non-MRO clients and will cooperate with and assist the State in preparing such reports and evaluations. In order to document needs as required for Medicaid, Contractor will state expected outcomes in reports in terms of medical necessity just as it will on the recommended services forms that result from its assessments. DCS will attempt to standardize the timing and content of required reports to the extent it can. Parties acknowledge that DCS may not be the payor for some of the services which are the subject of these reports. For private-pay clients, clients whose services are paid by insurance, and clients for whom no other payment source covers preparation of the necessary reports, DCS may specifically authorize payment for reports on a referral form. Contractor may then separately bill DCS for these reports as appropriate.

H. 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 components and service rates approved by DCS in Attachment 1 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 Community Mental Health Center 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 or a format designed by Contractor and approved by DCS) concerning the Contractor's service delivery and other issues pertinent to this Contract, as provided in the Community Mental Health Center 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.

- I. The Contractor agrees to utilize Continuous Quality Improvement practices to monitor service quality and delivery.
- J. The Contractor shall keep records on all visitation and transportation it provide as part of its delivery of services pursuant to this Contract.
- K. As requested by DCS, the Contractor shall provide self-authenticated records to DCS.
- L. The Contractor hereby agrees that all actual cost items 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.
- M. Disaster Plan: The Contractor shall send its disaster plan to DCS within thirty (30) days of the commencement date of this Contract.
- N. Release of Information: As detailed 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 written approval to use data, material, or information obtained or disclosed pursuant to this Contract for research purposes.

## **2. Consideration.**

- A. This Contract will be zero-based. The Contractor will be paid for its delivery of services as provided in this Contract (including any exhibits attached hereto), the Community Mental Health Center RFP and the Contractor's RFP Response, in accordance with the service components and

service rates approved by DCS and in **Attachment 1** (which is attached hereto and hereby incorporated by reference) and paid in accordance with the specifications outlined above in Section 1(D), based on the specified hourly or daily rate per unit of service and the specified amount for completion of a defined unit of service, subject to the terms and conditions of this Section and all other applicable provisions of this Contract, including Section 37 of this Contract.

B. Payment to the Contractor as provided in paragraph A of this Section 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 by Section 1(F) and 1(G).
- (2) Timely completion and submission to the DCS of monthly (or more frequently) written reports relating to specific children and families referred to Contractor for services or relating to other issues pertinent to this Contract, as required by Section 50(A) of this Contract.
- (3) Satisfactory completion and submission to the State of any applicable work product or other deliverable, as specified in the **Attachment 1**, the Community Mental Health Center 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.

C. By signing this Contract, the Contractor hereby acknowledges that the service components and service rates approved by DCS and in **Attachment 1** and paid in accordance with the specifications outlined above in Section 1(D) 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     ( )     years. It shall commence on           , 201   and shall remain in effect through           , 201  .

### 4. Access to Records - Modified.

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, including but not limited to payroll and banking records, purchase orders, and employee time and service reports, that are sufficient to documents the Contractor's financial and service activities in support of payments for services provided 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 agrees to bind 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 execution. 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. DCS 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. The audit shall be an audit of the actual entity, or distinct portion thereof that is the Contractor, and not of a parent, member, or the 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 shall permit all examinations and shall generate and maintain all documentation necessary to comply with all relevant audit requirements.

- 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 Sections 1(F) and 1(G)(4) of this Contract); (ii) quality review of the services provided by the Contractor pursuant to this Contract; and/or (iii) conducting any other requisite and/or desired program and/or service audits of the Contractor.
- (1) The Contractor shall, upon written demand by State, be required to repay to the State all sums paid by the State to the Contractor, for which adequate fiscal and/or service delivery documentation is not in existence for any time period audited. If an audit of the Contractor results in an audit exception, the State shall have the right to set off such amount against current or future allowable claims, demand cash repayment, or withhold payment of current claims in a like amount pending resolution between the parties of any disputed amount.
  - (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), and **Attachment 1**.
  - (4) The parties agree that any authorized employee or representative of the State, the state of Indiana or the United States (hereinafter referred to as "governmental agent") shall have the right to enter the premises of the Contractor or any subcontractor of the Contractor and inspect or audit any records or property agreements maintained by the Contractor or its subcontractors in connection with this Contract. The Contractor and its subcontractors shall make all books, records, and documents that relate to their activities under this Contract available for inspection, review, and audit when requested by a governmental agent. The Contractor shall

ensure the cooperation of its employees, officers, board members, and subcontractors in any review, audit, or inspection conducted by a governmental agent.

- (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 sixty (60) days of such monitoring visit. The State's report may contain observations, evaluations, suggestions and/or specific directions for corrective action by the Contractor. In the event that specific corrective action is required, the Contractor will have sixty (60) days from the receipt of the directions to comply, unless a different time period for correction is specified by 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.

Contractor hereby acknowledges and agrees that DCS may, in its discretion, conduct monitoring reviews of the Contractor, pursuant to this Section 7(C) of the 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 Contractor. Monitoring review activities conducted by DCS may include, but are not limited to, review of 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, 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. 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 Contractor's receipt of the written audit documents.
- G. If Contractor has not conducted an independent financial audit, Contractor shall annually submit Contractor's financial statements, including its profit-loss statement and balance sheet, to DCS within thirty (30) days of the anniversary date of the Contract.
- H. Contractor shall submit the items described in either Paragraph 7(F) or 7(G) of this Contract to the following address:

Deputy Director  
Child Welfare Services  
Indiana Department of Child Services  
302 W. Washington Street, Room E306-MS47  
Indianapolis, IN 46204-2739

Email: [ChildWelfarePlan@dcs.in.gov](mailto:ChildWelfarePlan@dcs.in.gov)

## 8. Authority to Bind Contractor.

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

## 9. Changes in Work.

The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. 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) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the state of Indiana. The Contractor agrees that any payments currently due to the

state of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

- 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 DCS' ward(s), 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.
- J. As required by IC § 5-22-16.5, the Contractor certifies that the Contractor is not engaged in investment activities in Iran. Providing false certification may result in the consequences listed in IC § 5-22-16.5-14 including termination of this Contract, denial of future state contracts, as well as an imposition of a civil penalty.

#### **11. Condition of Payment - Modified.**

All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations, as well as in accordance with all applicable Service Standards and all other specifications set forth above in Section 1 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, the Service Standards and all other specifications set forth above in Section 1) or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

#### **12. Confidentiality of State Information - Modified.**

The Contractor understands and agrees that data, materials, and information disclosed to the Contractor, 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.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC § 4-1-10 and IC § 4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

#### **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. Parties agree to use all reasonable efforts to resolve disputes at a local level, including those directly involved in services or administration and their supervisors. Parties may address remaining disputes through a dispute resolution process.

a. For DCS, that process will flow as follows:

- i. A Regional Manager or designee (RM) identifies an issue (e.g. pattern of non-compliance or serious billing issue).
- ii. RM notifies Deputy Directors for Service & Outcomes and Field Operations
- iii. DCS notifies Behavioral Health Management, Inc. (BHMI) of the issue and gathers input from BHMI.
- iv. DCS recommends action, including, but not limited to, a corrective action plan, suspension of referrals, repayments or other appropriate remedy up to and including termination of the agreement.
- v. DCS executes and monitors solution.

b. For CMHC, that process will flow as follows:

- i. CMHC's CEO or designee (CEO) identifies an issue.
- ii. CMHC notifies BHMI of the issue and gathers input from BHMI.
- iii. CMHC recommends action, including, but not limited to, protocol or policy revisions, billing adjustments, mediation or other appropriate remedy up to and including termination of the agreement.
- iv. CMHC executes and monitors solution.

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 the 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:

The parties agree to resolve such matters through submission in writing of their dispute to the Commissioner of IDOA. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The presentation may include a period of negotiations, clarifications, and mediation sessions and will not terminate until the Commissioner or one (1) of the parties concludes that the presentation period is over. The Commissioner's decision shall be a final and conclusive administrative decision unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. If no reconsideration is provided within ten (10) working days, the parties may mutually agree to submit the dispute to arbitration or mediation for a determination. If a party is not satisfied with the Commissioner's ultimate decision, the dissatisfied party may submit the dispute to an Indiana court of competent jurisdiction.

- D. The State may withhold payments on disputed items pending resolution of the dispute. Upon resolution of the dispute pursuant to paragraph C(1) of this Section, all payments shall be made within thirty-five (35) calendar days. The unintentional nonpayment by the State to the Contractor of one (1) or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

**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” is intended to include all staff working on the duties which are the subject of this Contract, including, but not limited to, the Contractor’s employees working on this Contract, any subcontractors working for the Contractor on this Contract, and any of these subcontractors’ employees or subcontractors.

- B. For purposes of this Section 19 of the Contract, the term “hire” or “hiring” means to hire, to directly contract with, to subcontract with, and/or to procure services through a State managed service provider, State quantity purchase agreement, or its equivalent (as determined by the State).
- C. If the State determines at any time during the term of this Contract (including any extensions thereto) that it would be in the State’s best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect within thirty (30) days of receiving a request for such release from the State. This release will be at no cost to the State or the employee.
- D. In order to effectuate the purpose of this Section, the State may initiate conversations about a potential hiring with any employee of the Contractor at any time during the term of this Contract (including any extensions thereto).

**20. Force Majeure.**

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a “Force Majeure Event”), the party who has been so affected shall immediately 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. 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 the Contract if the Contractor has violated a material provision of this Section; and
- (12) At the termination of the Contract, the Contractor shall return or destroy all Health Records and/or PHI received or created under the Contract. If the State determines return or destruction is not feasible, the protections in this Contract shall continue to be extended to any Health Records and/or PHI maintained by the Contractor for as long as it is maintained.

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

**24. Indemnification.**

The Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all 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 IVOSB Division (“IVOSB Division”) 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
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*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:*

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A copy of each subcontractor agreement must be submitted to the IVOSB Division 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](mailto:IndianaVeteransPreference@idoa.IN.gov), or mailed to IDOA, 402 W. Washington Street, Room W-478, 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](mailto: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](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report IVOSB certified subcontractor payments directly to the IVOSB Division, as reasonably requested and in the format required by the IVOSB Division.

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 – Deleted.**

**28. Insurance – Modified.**

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

- (1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence unless additional coverage is required by the State. The State is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly under or in connection with this Contract.
- (2) Automobile liability for owned, non-owned and hired autos with minimum liability limits not less than \$700,000 per person and \$5,000,000 per occurrence. 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 would be required if the Contractor is responsible for the management and oversight of various employee benefit plans and programs such as pensions, profit-sharing and savings, among others. These contractors face potential claims for

mismanagement brought by plan members. Limits should be no less than \$700,000 per cause of action and \$5,000,000 per occurrence.

- (6) Valuable Papers coverage, available under an Inland Marine policy, is recommended when any plans, drawings, media, data, records, reports, billings and other documents are produced or used under this agreement. Insurance must have limits sufficient to pay for the re-creation and reconstruction of such records.
- (7) The Contractor shall secure the appropriate Surety or Fidelity Bond(s) as required by the state agency served or by applicable statute.

The State may require the Contractor to provide a bond or insurance coverage for all persons who will be handling funds or property received or disbursed as a result of this Contract, or who may carry out the duties specified in this Contract, in an amount equal to one-half (1/2) of the total payments provided to the Contractor under this Contract or \$250,000, whichever is less, to be effective for the period of this Contract plus three (3) years for purposes of discovery. The Contractor's coverage must provide protection against losses resulting from criminal acts and wrongful performance of the duties specified herein and must specify the state of Indiana as an obligee or additional insured. The Contractor shall immediately notify the State if said bond or insurance is cancelled or modified in amount of coverage. In the event of cancellation, the State shall make no further payments until certification is provided by a bonding or insurance company that the provisions set forth in this Section have been satisfied. The State may at its discretion require the Contractor to furnish additional or different bond or insurance coverage.

- (8) Cyber Liability if requested by the State addressing risks associated with electronic transmissions, the internet, networks and informational assets, and having limits of no less than \$700,000 per occurrence and \$5,000,000 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) – Deleted.**

**30. Licensing Standards – Modified.**

A. The Contractor, its employees and subcontractors shall comply with all required and applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such required and applicable laws, rules or regulations. If any required license or certification expires or is revoked, or any disciplinary action is taken against a required and applicable license or certification, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract, provided; however, if this Contract is terminated based on a license revocation or other disciplinary action that is reversed or overturned on appeal, this Contract will be immediately reinstated by the State. This paragraph shall not apply to any voluntary accreditation that the Contractor chooses to maintain. If accreditation is not required for the Contractor, noncompliance with voluntary accreditation standards shall not constitute grounds for nonpayment, revocation, or any other disciplinary actions outlined in this Section.

B. If the required license of any of the Contractor's employees or subcontractors expires or is revoked, the Contractor will immediately prohibit such employee or subcontractor from providing any services that are subject to this Contract, unless the employee or subcontractor is granted a provisional license or is otherwise authorized to continue to provide services. The State may, at its option, terminate this Contract if the Contractor fails to comply with this requirement.

**31. Merger & Modification – Modified.**

A. This Contract constitutes the entire agreement between the parties with respect to the subject matter herein. All prior agreements, representations, statements, negotiations, and undertakings are hereby superseded. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. Except as provided herein, this Contract shall not be modified, supplemented, or amended in any manner.

- B. The Contractor shall notify the State representative listed in Section 34(A)(1) [Notice to Parties] within ten (10) calendar days of any termination of services payable or reimbursable pursuant to this Contract. Such termination of services 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 acknowledging such termination.
  
- C. As described in Section 1.A, the purpose of this Contract and all other Child Welfare Services Provider contracts is to select Community-Based Services vendors/providers who can satisfy DCS' need for the provision of a comprehensive array of child welfare services to all eighteen (18) regions and corresponding ninety-two (92) local DCS offices in the state of Indiana. In order to meet this need, the parties anticipate that there may be certain changes that may affect the service/program array which the Contractor is available to offer and that such changes may require an update to **Attachment 1**. Therefore, pursuant to IC § 5-22-20, DCS reserves the right to make unilateral changes in the work within the Scope of the Contract. Should the State (on its own or after it considers a request of the Contractor) determine that such change in program availability and/or service code and/or service component and/or their associated rates require modification and such modification requires a revision to the information included in **Attachment 1**, such changes shall not require the execution of a formal amendment to this Contract, but may be accomplished by written notice from the State to the Contractor with an accompanying updated **Attachment 1**, if necessary. This written notice shall become part of the Contract and will be available for review, upon request, at the Indiana Department of Child Services, 302 W. Washington Street, Room E306, Indianapolis, IN 46204, until such time as it is posted electronically on the internet.
  
- D. With the exception of the modification procedures permitted pursuant to paragraphs B and C 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 MWBE Compliance 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 MBE/WBE Division (“Division”) 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

*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:*

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A copy of each subcontractor agreement must be submitted to the Division 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](mailto:MWBECompliance@idoa.IN.gov), or mailed to MWBE Compliance, 402 W. Washington Street, 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](mailto: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 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](http://www.in.gov/idoa/mwbe/payaudit.htm). The Contractor may also be required to report Division certified subcontractor payments directly to the Division, as reasonably requested and in the format required by the Division.

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.

**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 services to the following addresses, unless otherwise specifically advised.

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

**Deputy Director of Child Welfare Services  
Indiana Department of Child Services  
302 W. Washington Street, E306-MS 47  
Indianapolis, IN 46204  
E-mail: David.Reed@dcs.in.gov (or designated successor's email)**

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

**(Contact name)**  
**(Contact title, if applicable)**  
**(Name of Agency)**  
**(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) any written notices given by the State to the Contractor (including any attachments thereto) pursuant to Section 31 of this Contract; (3) **Attachment 1**; (4) **Exhibit 1** (which will be described below in Section 53 of this Contract); (5) the most current form of DCS' Service Standards, DCS' Child Welfare Principles, and the Assurances (which are described in Section 1(B)(2), Section 1(B)(3), and 1(C) of this Contract); (6) the Community-Based Services RFP; and (7) the Contractor's RFP Response. 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, data, film, tape, articles, memoranda, and other materials developed under this Contract shall be considered "work for hire" and the Contractor transfers any ownership claim to the State and all such materials will be the property of the State. Use of these materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. The Contractor specifically releases to the State any property right which the Contractor may have to copyright, license, patent, or otherwise dispose of data, findings, recommendations, or other work product of this Contract. The Contractor shall provide the State full, immediate, and unrestricted access to the work product during the term of this Contract and as necessary thereafter.

- B. 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.
- C. 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 arrears in conformance with State fiscal policies and procedures and, as required by IC § 4-13-2-14.8, 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 37, 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 such invoice/claim 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 should 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 the Contract (including any exhibits/attachments thereto or web links referenced therein).
- E. As described in Section 2(B)(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 90 calendar days after the date services are provided/costs incurred or after the date the service referral is issued, whichever is later. 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.**

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

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

**41. Renewal Option – Modified.**

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 two (2) years for a total Contract term of no longer than four (4) years.

**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 the Indiana Department of Administration 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 (the "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 the Indiana Department of Administration ("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 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 35 (Nondiscrimination); Section 45 (Termination for Convenience); Section 50 (Reports and Records Concerning Services); Section 52 (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.**

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, are included in the service rates approved by DCS and in **Attachment 1** and paid in accordance with the specifications outlined in Section 1(D). The State will not reimburse the Contractor separately for any travel expenses.

**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. Reports and Records Concerning Services – Added.**

A. In addition to any reports and case record documentation required by any previous 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 policies 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 A, 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.

B. This Section 50 (including all of its subsections) 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.

- C. 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 of this Contract.
- D. Prompt compliance 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.
- E. In the event the contents of any report is considered deficient by the State, the State will so notify the Contractor in writing, not later than thirty (30) days 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.
- F. 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.

**51. Delivery of Documents, Files, Data, Studies or Reports to the State Upon Termination or Expiration of this Contract – Added.**

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.

**52. 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.

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

- 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 (which includes interns) 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) For those with **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:
  - (a) *Verify the identity* of all individuals subject to criminal and background checks by viewing a current government issued picture I.D;
  - (b) *Conduct Child Protection Services ("CPS") checks* for all states of residency in the past five (5) years (for Indiana, send DCS an Indiana Request for A Child Protection Services History Check; for other states, *see* DCS' website on child welfare policies and contractor policies for web links to CPS records);
  - (c) *Conduct National Sex Offender Registry checks* for all states of residency in the past five (5) years (*see* DCS' website for web links for national sex offender registry checks);
  - (d) *Conduct Local Law Enforcement checks with law enforcement agencies that would have responded to each residential address in the last five (5) years;*
  - (e) *Register and make appointment(s) for Fingerprint-Based National and State Checks through the State approved fingerprint vendor* [The Provider must confirm that their name is available as a valid provider to be printed for DCS purposes on the State approved fingerprint vendors website. If the Provider cannot locate their name as a valid provider under DCS on the registration/appointment website, no additional steps can be taken until the Provider contacts DCS at [background.checkunit@dcs.in.gov](mailto:background.checkunit@dcs.in.gov) for further instructions. Employee(s)/volunteer(s) should not be printed under a local DCS office or other Provider name.] *and follow through with obtaining fingerprints;* and
  - (f) *Review Results of Criminal and Background Checks and take appropriate action as listed in the DCS Child Welfare Policy 13.4, Evaluation of Background Checks for DCS Contractors.*
- (2) For those with **only** electronic or physical **access to children's records**:
  - (a) *Verify the identity* of all individuals subject to criminal and background checks by viewing a current government issued picture I.D;
  - (b) *Conduct Child Protection Services ("CPS") checks* for all states of residency in the past five (5) years (for Indiana, send DCS an Indiana Request for Child Protection

Services History Check; for other states, *see* DCS' website on child welfare policies and contractor policies for web links to CPS records);

- (c) *Conduct National Sex Offender Registry checks* for all states of residency in the past five (5) years (*see* DCS' website for web links for national sex offender registry checks); and
- (d) *Review Results of Criminal and Background Checks* and take appropriate action as listed in the DCS Child Welfare Policy 13.4, Evaluation of Background Checks for DCS Contractors.

All directors/chief executive officers, facility managers, and licensing applicants, regardless of their level of contact with children, shall have background checks commensurate with the highest level of background checks required of any other Covered Personnel within their organization. If no other Covered Personnel require background checks and no exception is granted for an administrative contract, they shall have the checks described in this paragraph A(2).

(3) For all Covered Personnel and Subcontractors:

- (a) The Provider shall require Covered Personnel and subcontractors for this Contract to immediately notify the Provider of any information about them that would have been revealed by the checks above including substantiation for child abuse or neglect or other similar complaints or charges and of any convictions or arrests. The Provider shall immediately relay such notice to DCS. The Provider shall further collect from each Covered Personnel an annual attestation regarding whether that individual has any history of such substantiation, arrest or conviction and shall include any previously unreported information to DCS in its annual Certification (such Certification is included in Exhibit 1, which is attached hereto and hereby incorporated by reference).
- (b) The Provider shall ensure all subcontractors have the required background checks. Each subcontractor must contact the DCS Central Office Background Check Unit ("COBCU") and have the subcontractor name added to the fingerprint registration site and COBCU databases as a separate entity. The subcontractor cannot register under the name of the Provider.
- (c) Each subcontractor will be responsible for coordinating with COBCU to evaluate their results and resolve any outstanding issues. The subcontractor will be responsible for retaining their own background check results in their own personnel files but shall provide the primary contractor with the Exhibit 1 – Certification of Completion of Required Criminal and Background Checks.

Except for A(3)(a) above, the required checks must be performed every four (4) years based on the anniversary of the individual Covered Personnel's initial checks.

- B. The Provider shall be responsible for assessing job responsibilities and categorizing Covered Personnel as subject to A(1), A(2), or as not-covered and for performing the appropriate checks. Any Covered Personnel who might serve as a substitute for a covered position, even in emergency circumstances, should undergo the checks required for that covered position.
- C. The Provider shall maintain a record of the results of each check conducted pursuant to this Section. The Provider shall, if requested by the State, provide a copy of that record to DCS or make the record available for inspection by an authorized representative of DCS.
- D. With respect to any current Covered Personnel, the Provider shall submit the form attached hereto as **Exhibit 1** (or a similar form as updated by DCS) at the time it submits this Contract to the State for signature or within thirty (30) days after the effective date of this Contract, whichever is earlier, and annually upon the anniversary of the effective date of the Contract. **Exhibit 1** will certify that the requirements under paragraph A of this Section have been completed. A spreadsheet listing the Provider's current Covered Personnel that have received the requisite criminal and background checks (Exhibit 1, Page 2) shall be submitted as part of Exhibit 1. The Provider shall furnish any other documentation related to background checks as DCS requests. The Provider has an ongoing obligation to assess job responsibilities and to conduct appropriate checks for employees or volunteers who join the Provider after this Contract begins. Such staff may **not** provide any services that involve contact with children before the requisite checks have been completed and all outstanding issues resolved.
- E. In order to allow DCS to evaluate the results and to make determinations regarding qualifications, national fingerprint-based criminal history checks relating to Covered Personnel are required to be conducted through DCS' approved fingerprint vendor in accordance with the terms and conditions stated in IC 10-13-3-38.5, 39. The results of the national fingerprint-based criminal history checks will be returned to DCS as an authorized entity to receive the results. DCS will inform the Provider whether the report it receives concerning the subject of a check shows any record that would be grounds for denial of his/her ability to provide services and/or perform activities pursuant to this Contract. If any Covered Personnel receive a response of conditionally disqualified or disqualified, further follow up is required. If the result is disqualified, then the individual may be eligible for a waiver. The Provider should contact the DCS' background check unit to determine if the individual is eligible and to apply for the waiver. DCS will not release to the Provider any criminal history record information ("CHRI") contained in any report that it receives from the Federal Bureau of Investigation ("FBI") through the Indiana State Police ("ISP"). If the Provider requests a waiver of criminal history, DCS will inform the Provider of the decision on the waiver request.
- F. In the event a criminal history or background check required herein produces any record concerning the subject of a check that would be a ground for denial of his/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. Eligibility and Appeals – Added.**

- A. 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.
- B. 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.

**56. 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.

**57. 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.

**58. 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.

**59. 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.

**60. 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.

**61. 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 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 37. Penalties/Interest/Attorney’s Fees; Section 40. Public Record; Section 45. Termination for Convenience; Section 45. Termination for Default and Termination or Suspension for Additional Reasons; Section 47. Travel; Section 48. Waiver of Rights; Section 50. Reports and Records Concerning Services; Section 51. Delivery of Documents, Files, Data, Studies or Reports to the State Upon Termination or Expiration of this Contract; Section 53. Criminal and Background Checks; Section 54. Purchase and Disposal of Property; Section 55. Eligibility and Appeals; and Section 58. 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.

**62. 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 the *2018 OAG/IDOA Professional Services Contract Manual* or the *2018 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;**
- 27. Information Technology Enterprise Architecture Requirements – deleted;**
- 28. Insurance - modified;**
- 29. Key Person(s) – deleted;**
- 30. Licensing Standards – modified;**
- 31. Merger & Modification – 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;**
- 41. Renewal Option – modified;**
- 46. Termination for Default and Termination or Suspension for Additional Reasons – modified;**
- 47. Travel – modified;**
- 48. Waiver of Rights – modified;**
- 49. Work Standards – modified;**
- 50. Reports and Records Concerning Services – added;**
- 51. Delivery of Documents, Files, Data, Studies, or Reports to the State Upon Termination or Expiration of this Contract – added;**
- 52. Conflict of Interest – added;**
- 53. Criminal and Background Checks – added;**
- 54. Purchase and Disposal of Property – added;**
- 55. Eligibility and Appeals – added;**
- 56. Fees – added;**
- 57. Environmental Tobacco Smoke – added;**
- 58. Lobbying Activities – added;**
- 59. Religious or Political Activities – added;**
- 60. Buy American – added; and**
- 61. Survival – added.**

SAMPLE

**SIGNATURE PAGE**

#

**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]**

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

[Contractor]

Indiana Department of Child Services

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

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

Terry J. Stigdon, Director

\_\_\_\_\_

Name and Title, Printed

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

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

**Approved by:**

Indiana Department of Administration

**Approved by:**

Indiana State Budget Agency

By: \_\_\_\_\_ (for)

Lesley A. Crane, Commissioner

By: \_\_\_\_\_ (for)

Jason D. Dudich, Director

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

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

**Approved as to Form & Legality:**

Office of the Attorney General

\_\_\_\_\_  
(for)

Curtis T. Hill, Jr., Attorney General

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

**\*\*\*DCS reserves the right to modify this sample contract to include any changes to State contracts by the Indiana Department of Administration\*\*\***