

RESIDENTIAL TREATMENT SERVICES PROVIDER CONTRACT

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This Contract (“Contract”) entered into by and between the Indiana Department of Child Services, an agency of the State of Indiana established under IC 31-25-1 (“DCS” or “the State”), and , a licensed Indiana Residential Treatment Services Provider having its principal office at (the “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of the mutual undertakings and the terms and conditions stated herein, DCS and the Contractor agree as follows:

Whereas, the Contractor is a child caring institution licensed by DCS pursuant to IC 31-27-3, and/or a group home licensed by DCS pursuant to IC 31-27-5, and/or a private secure facility licensed by DCS pursuant to IC 31-27-3 and 465 IAC 2-11; and

Whereas, on February 9, 2011, DCS and the Indiana Association of Residential Child Care Agencies, Inc. entered into a Settlement Agreement regarding rates paid to residential treatment services providers, the promulgation of administrative rules relating said rates, and the development of a Residential Provider Manual (the “Settlement Agreement”); and

Whereas, the administrative rules referred to in the Settlement Agreement have been promulgated at 465 IAC 2; and

Whereas, DCS and the Contractor wish to memorialize their respective duties and obligations regarding children placed by DCS or a probation department with the Contractor.

Now, therefore, the parties agree as follows:

1. Purpose.

A. DCS and the Contractor are entering into this Contract for the purpose of establishing the duties, terms and conditions pursuant to which the Contractor will provide services to DCS or a probation department for a Child in residential care and treatment in accordance with an Individual Child Placement Referral, Individual Case Plan, and Treatment Plan. This Contract may also apply to children placed with the Contractor for services pursuant to terms and conditions specified by DCS in a voluntary placement agreement described in IC 31-34-1-16(b).

B. The parties acknowledge that DCS’s Practice Model includes its focus on “Safely Home, Families First” and the goals of family placements where possible, reunification and timely permanency in a safe, home-like setting.

C. It is the intent that this Contract shall be read in a manner that is consistent with the Settlement Agreement.

2. Definitions.

A. For the purposes of this Contract and in conjunction with DCS' Residential Provider Manual ("Provider Manual") and policy (both available on the DCS web site), the definitions in 465 IAC 2-16 shall control. The following terms used in the Contract are defined:

B. **Child** means a DCS ward or probation youth placed under this Contract.

C. **Child and Family Team ("CFT")** means the team assembled pursuant to DCS Child welfare policy 5.7, as amended from time to time, to facilitate plans for assessment, safety, service delivery and permanency.

D. **Residential Treatment Services Provider ("residential provider")** has the meaning set forth in 465 IAC 2-16-13.

E. **Individual Case Plan ("Case Plan")** means the Case Plan required under IC 31-34-15.

F. **Individual Child Placement Referral ("ICPR")** means the Child-specific placement referral that details the applicable program related to services to be rendered by the Contractor per the Contractor's established and approved rates in **Attachment 1** to this Contract, which is attached hereto and incorporated herein. Pursuant to 465 IAC 2-16, new rates established annually shall amend this Contract; and the most current **Attachment 1** will control. The form of the ICPR may also vary over time to accommodate system and other changes. The basic elements will remain the same, and a sample ICPR is attached hereto as **Attachment 2** and incorporated in this Contract for reference.

G. **Placing Agency** means either DCS or a probation department when the agency has primary responsibility for the out-of-home placement, care, and supervision of a Child placed with the Contractor:

H. **Treatment Plan** means a goal-oriented, time-limited, individualized program of action for a Child, developed by the Contractor in cooperation with the Placing Agency.

I. **Program Service Categories** include:

Emergency Shelter: This program provides emergency services to meet basic needs for safety, food, clothing, shelter, education, and recreation on a short-term basis, and allows access and admission on a 24-hour basis. This program can only be operated by facilities with an emergency shelter care license, a child caring institution license, or group home license and is only available for twenty (20) days unless an exception is made in writing by the DCS Director or designee. An exception request must be submitted in writing prior to the fifteenth day of placement and will only be granted for exceptional circumstances.

Open Residential: This program provides a full range of therapeutic, educational, recreational, and support services by a professional, interdisciplinary team either on or off the campus of the facility. This program can only be operated by a facility with a child caring institution or group home license.

Staff Secure / Intensive Residential: This program provides more intensive and frequent services and more intensive staffing patterns than open residential. The staffing, structure, and environment make possible more intensive child supervision and higher degree of safety. This program can only be operated by a facility with a child caring institution license.

Secure Treatment/PRTF: This program provides treatment within a locked, secure facility to gravely disabled children with chronic behavior that harms themselves or others and is also certified as a psychiatric residential treatment facility. This program can only be operated by a facility with a private secure facility license. The rate set under this Contract for this program is for children that do not meet Medicaid criteria for PRTF admission.

Secure Treatment/Non-PRTE: This program provides treatment within a locked, secure facility to gravely disabled children with chronic behavior that harms themselves or others. This program can only be operated by a facility with a private secure facility license.

Short-Term Diagnostic and Evaluation: This program includes a time-limited diagnostic and assessment process that evaluates each child's and family's needs and is only available for fourteen (14) days unless an exception is made in writing by the DCS Director or designee. An exception request must be submitted in writing prior to the tenth day of placement and will only be granted for exceptional circumstances.

Sexually Maladaptive Youth: This program provides highly structured, intensive sex offender specific treatment designed to improve public safety by reducing the risk of reoccurring sexually based offenses.

Developmental and Emotional Disabilities: This program provides highly structured, intensive services to children with developmental and emotional disabilities, including autism spectrum disorders.

Drug and Alcohol: This program provides highly structured, intensive substance abuse treatment designed to focus on behaviors that have attributed to high risk behavior.

Teen Mom and Baby: This program provides comprehensive, specialized services for pregnant and parenting teen mothers. This program can only be operated within a group home or child caring institution.

Independent Living: This program assists young people in gaining the skills required to live healthy, productive, and responsible lives as self-sufficient adults while still providing needed daily supervision. It addresses all of the preparatory requirements for independent adulthood and recognizes the evolving and changing developmental needs of the adolescent. This program can only be operated by a facility with a group home or child caring institution license.

3. Responsibilities of the Placing Agency.

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

B. **Assessment.** The Placing Agency shall assess the needs of a Child using its current assessment tool and will make a referral to the appropriate Program Service Category.

C. **DCS Family Case Manager Responsibilities.** The DCS Family Case Manager shall be responsible for:

Providing 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,

Notification to the Contractor at least ten (10) business days in advance of any scheduled case reviews and reasonable notification to the Contractor of Child and family team meetings so that the Contractor may have adequate notice. However, the Contractor's presence at a hearing during which the next case review is scheduled shall satisfy the notice requirements hereunder, provided that if the date of the next scheduled case review is changed, the Contractor will receive the advance notice described in this subparagraph; and

Consultation with the Contractor's case management staff to ascertain that Treatment Plans are consistent with individual Case Plans and permanency plans.

D. Information to be supplied by the Placing Agency. At the time of placement or within six (6) business days thereafter, the Placing Agency is required to furnish the Contractor with all pertinent information that relates to the Child and the Child's care and treatment while placed with the Contractor if such information exists. Such information will include:

- Child's Case Plan (if available or as soon as required by law);
- Approved assessment tool result (currently CANS);
- Relevant court order(s);
- Child's education records in the possession of the Placing Agency;
- Copy of Child's current Indiana Medicaid card or Medicaid number (as soon as available from Medicaid);
- ICPR, which will include the appropriate billing information for the Child;
- Child health summary records, medical records, and medical passport, if available (IC 31-28-1, IC 31-28-2, IC 31-28-3);
- All necessary releases and consents, including authorization to seek medical treatment.

The Child's full social security number will be disclosed to the Contractor only when expressly permitted or required by state law, federal law, or a court order. For example, Child's social security number may be disclosed to Contractor in circumstances including, but not limited to, the following situations:

- (1) for children age sixteen (16) and older if the case plan requires Contractor to assist the child in finding employment.
- (2) for children enrolled in the Medicaid program as needed for program enrollment and for on-going confirmation of enrollment status.
- (3) for children for whom the rights of the parents have been terminated, the State may consent to release of the Child's social security number pursuant to an exception set forth in I.C. 4-1-10 et. seq.

E. Contact Information. The Placing Agency shall be responsible for advising the Contractor of current agency contact information (DCS' Family Case Manager, supervisor, and probation officer, if applicable), including telephone numbers and e-mail addresses, to ensure the Contractor meets its obligation of twenty-four (24) hour notification if a Child is injured, hospitalized, has a life-threatening illness, has run away, or has died.

F. Determination of IV-E Eligibility Status. The Placing Agency will be responsible for determination of the Child's initial IV-E eligibility status and any changes in that status.

G. Meeting with the Child. In collaboration with the Contractor, the assigned DCS' Family Case Manager will personally meet with the Child at least once every thirty (30) days.

H. Transfer of the Child. The Placing Agency will determine if court approval is required or should be obtained for the transfer of a Child due to emergency respite or placement disruptions, and will be responsible for obtaining such approval.

4. Duties of Contractor.

A. General Duties.

(1) *Program Service Categories.* The per diem paid to the Contractor, and more fully described in Section 6 (Consideration) is based on the programs that the Contractor provides for placement of a Child. The Contractor's license categories, facilities and programs available through

Contractor are set forth on **Attachment 1**. **Attachment 1** may be updated as provided in Section 28 herein. The programs for each individual Child placed with the Contractor through the Placing Agency will be stated in an Individual Child Placement Referral (“ICPR”) sent by the Placing Agency to the Contractor at the time the Child is placed with the Contractor.

The then-current current **Attachment 1** will control.

(2) *Compliance with Administrative Rules.* The Contractor warrants and represents that it has read and understands the Administrative Rules adopted by DCS, and found at 465 IAC 2, and that Contractor’s compliance with the Rules is a material term of this Contract.

(3) *Compliance with DCS non-rule Policies.* The Contractor acknowledges that DCS and the Contractor need to apply consistent standards with respect to Child placements, and Contractor agrees to abide by all DCS policies. DCS will provide written notice to the Contractor of any new policies, or changes in current policies that have been made by DCS, by including such notice on its website at <http://www.in.gov/dcs/>, and Contractor shall abide by such policies.

(4) *Adherence to the Case Plan.* The program and services that the Contractor provides to a Child under this Contract and the ICPR must be consistent with all the terms and provisions of any Case Plan prepared for the Child, or any other written Case Plan for the Child that is in effect at the time of placement, and any modifications to the Case Plan that are made while the Child is placed with the Contractor. Contractor acknowledges and agrees that children may be, and sometimes must be, placed before an ICPR has been delivered to Contractor; and Contractor shall make placements as the best interests of the children require, in a manner consistent with DCS policies. Accordingly, DCS agrees that it will pay for services rendered between the time of a DCS-requested placement and Contractor’s receipt of the ICPR.

(5) *Availability of Services.*

(a) Services shall be available and provided twenty-four (24) hours per day, seven (7) days per week, including holidays, in the Contractor’s licensed facility for the duration of the Contract.

(b) Subject to the specific services outlined in each individual Case Plan, services provided or arranged by the Contractor shall include the following:

- (i) Food
- (ii) Clothing that is adequate and appropriate to the season and the Child’s age and sex
- (iii) Shelter
- (iv) Personal incidentals
- (v) Daily supervision
- (vi) Behavioral health programming for all programs except emergency shelter care
- (vii) Medical and dental care
- (viii) Family Reunification Services:

In accordance with the ICPR and the current Case Plan, and in preparation of a permanency plan, services shall be provided to both the Child and the Child’s family to prepare the child and family for the

return of the Child to the family home, unless the court has determined that reasonable efforts toward family reunification are not required.

Family participation shall at a minimum include the proposed primary caregiver upon discharge of the Child, as determined by the assigned family case manager or probation officer. The nature and level of family participation shall be jointly decided between Contractor and the family case manager or probation officer, in accordance with the Child's approved case plan. The participation shall include regular family counseling where appropriate.

The Contractor shall be responsible for arranging for transportation for visitation with the Child's family members or others, as approved by the Placing Agency and in accordance with the Child's ICPR, at times that accommodate the reasonable needs of the family. This is included the payment rate set out on **Attachment 1**. See behavioral health section below for information on therapeutic supervised visitation.

(ix) Education:

The Contractor shall ensure that a Child is properly registered in a school that is appropriate for the Child's educational needs and consistent with the provisions of any individual education program (IEP) developed for the Child either prior to placement or during the Child's placement. This includes transfer of the Child's previous school records and immunization records between schools. Unless an exception is permitted or required by the Child's Case Plan or otherwise approved by the Placing Agency as necessary for the Child's particular needs, the Child's educational program will be provided in a public school in the community where Contractor's facility is located or in the school corporation in which the Child has legal settlement. Unless otherwise specified in the Child's Case Plan, or unless otherwise specified in an educational program approved by the applicable DCS Regional Manager, the educational services provided shall meet the standards set by the Indiana Department of Education, including eligibility for transferable credit towards graduation. The Contractor shall also provide school supplies for the child and transportation to school unless required to be provided by the public school. If the Contractor provides education within the residential facility, DCS will pay for education as set out in 465 IAC 2-16 and the accompanying Provider Manual.

(x) Extracurricular activities:

The Contractor shall ensure that the Child participates in extracurricular activities as appropriate to the needs, desires, and capabilities of the Child. The Contractor shall work with the Placing Agency to determine what extracurricular activities are appropriate for the Child.

(xi) Treatment and/or Care Plan:

Within forty-five (45) days of the placement in all programs but emergency shelter care, the Contractor shall prepare a Treatment Plan that is consistent with the Child's ICPR and current Case Plan. For emergency shelter care programs, the Contractor shall prepare a care plan as required by 465 IAC 2-10-66 or 465 IAC 2-13-64.

(xii) Independent Living Services:

Per DCS' policy, the current required Independent Living (IL) assessment for children age sixteen (16) and older is the Ansell-Casey Life Skills Assessment, which can be located and completed online at www.caseylifeskills.org. The obligations described herein regarding assessments assume the use of

DCS' currently required IL assessment. DCS will notify Contractor if the required IL assessment changes.

The assessment is to be completed by the Child as well as the Contractor. The Contractor is responsible for administering each assessment, analyzing the results, and carrying out all the recommended services including prioritizing, with the Child's input, the applicable IL skills that the Child needs to acquire and teaching the skills as prioritized. Contractor shall comply with the relevant DCS IL service standard current at the time of service delivery (posted on DCS' website, currently at <http://www.in.gov/dcs/2333.htm>) for the Contractor's licensure category and shall address the full array of IL services and skills described therein. These Service Standards are hereby incorporated by reference and are available in their most current form on the DCS website. The Contractor should ensure that the assessment is completed and returned to the referral agent within 30 days of placement or the youth's sixteenth (16th) birthday. The assessment should be updated annually. Contractor should ensure youth are receiving Independent Living skills education in the residential facility. Contractor should identify teachable moments and ensure that IL skills are taught in natural settings and provide experiential learning opportunities accordingly. IL topics of education should include those above. Independent Living education should start the day the youth/Child moves is placed, not waiting until the Child reaches age sixteen (16.) Contractor should document IL services for youth aged sixteen (16) and over in the monthly report submitted via the National Youth in Transition Database ("NYTD") portal.

B. Responsibilities for a Child in Care.

(1) *Quality of Care.* Contractor will ensure that its staff will be appropriately trained. The number of children served on a daily basis shall not exceed the capacity specified in the applicable license unless DCS has approved an exception prior to the placement of a child. DCS, and not a court, is the only entity that can grant an exception to capacity. Contractor will adequately monitor quality of care.

(2) *Staffing.* Contractor agrees that it will hire staff, subcontract or lease employees as necessary to deliver the services, including Medicaid-eligible services, available under this agreement. Contractor agrees that all expectations in this agreement apply equally to Contractor's staff whether they are regular employees, leased employees or subcontractors.

(3) *CANS.* As DCS requests, Contractor shall administer the age appropriate Child and Adolescent Needs and Strengths Assessment (CANS) Comprehensive tool. Contractor acknowledges that DCS will also conduct periodic CANS for the child but that assessments by both parties are intentional and may be anticipated to have different results given the timing and context of the assessments. Contractor also acknowledges that CANS results are used to track outcomes, and that the requirements for CANS may change over the term of the Contract. Initially, Contractor shall administer the age appropriate CANS at admission of a Child to a facility. CANS reassessments are required every six (6) months by the Contractor and at discharge. Contractor is required to enter the data from the CANS assessment into the Data Assessment Registry Mental Health and Addictions (DARMHA) database. CANS users must be re-certified as required by the Department of Mental Health and Addiction.

(4) *Healthcare – Physical Needs.*

(a) For the purposes of the routine and emergency medical care referenced in the ICPR, DCS' signature on this Contract shall serve as its consent to such care.

(b) In addition to its obligations for physical and dental examinations set forth in 465 IAC 2-9 through 465 IAC 2-13, the Contractor will ensure that an initial exam consists of early and periodic screening, diagnosis, and treatment (EPSDT) services. The Contractor will ensure the Child's medical passport is updated as needed for DCS' wards.

(c) The Contractor shall comply with all applicable laws and rules and DCS policies, and the notice and consent requirements and other considerations described therein regarding medical care (see specifically policies 8.25-8.36) and parameters on discipline (see policy 8.18) and all related laws, including limitations on use of physical restraints or seclusions in the Children's Health Act of 2000 (42 U.S.C. § 290jj *et seq.*) Parties acknowledge that a set of mutually acceptable consent /release/ authorization forms is being developed and that Contractor and DCS will use these standard forms once finalized. The policies are found at <http://www.in.gov/dcs/2354.htm>.

(d) The Placing Agency will advise the Contractor at the time of placement or as soon as possible (depending on when the information is available from Medicaid) if the Child is eligible for Indiana Medicaid coverage and will provide the Child's Medicaid number. The ICPR will include the Child's Medicaid eligibility status and Medicaid number if available.

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

(f) With respect to medical or behavioral emergencies:

(i) The Contractor will notify the Placing Agency in writing (by facsimile or e-mail transmission) either prior to or not later than four (4) hours after its occurrence, of any injury or illness requiring emergency room medical attention, hospitalization, or invasive treatment for a resident.

(ii) All non-routine medical procedures will require at least one (1) written medical opinion and court approval. Unless parental rights have been terminated, a parent, guardian, or custodian may authorize medical treatment for a Child who is a ward of the DCS. The use of psychotropic medication must be authorized as required in DCS policy.

(5) *Progress Reports and Court Appearances.* The Contractor will ensure that a progress report relating to the Child's current Case Plan and Treatment Plan will be completed and forwarded to the appropriate DCS Family Case Manager or probation officer at least monthly and whenever necessary in conjunction with a court proceeding. The Contractor will use any standard report form(s) required by DCS with relevant assessments, evaluations or other updates attached as necessary. Each progress report must specifically address the following:

- Progress toward permanency plan goals;
- Services provided;
- Treatment plan goals and accomplishments;

Current needs of the Child;
Plans to meet identified needs of the Child; and
Projected discharge date;
Any other information requested by the Placing Agency as it relates to the Child and family's progress.

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

The Contractor shall make available at least one (1) Title IV-E case management staff person who is knowledgeable about the Child's progress as needed for appearances at court hearings to present progress reports and prognosis of treatment, and to answer questions concerning the Child who is the subject of the hearings. No additional payments will be made for travel to court appearances or the time spent at court appearances. See behavioral health section below for information on a therapist's attendance at court. Contractor may fulfill this obligation by alternatives to in-person appearances including appearances by telephone, videoconference, and any other technological means or business records affidavits as allowed by the court and approved by DCS.

(6) *Behavioral Control/Transfers of Child.* In response to an emergency situation or need for temporary intervention, Contractor shall address de-escalation and behavior modification within the program referred on the ICPR, including use of on-call case management staff and/or therapists and appropriate restraints and seclusion. Should Contractor make an emergency transfer of any Child to a different DCS-licensed program, level of care, or physical location, Contractor will notify DCS within four (4) hours of such transfer. Such transfers shall be at no additional cost to DCS. If the Child is in need of a new placement, the Contractor must notify and request approval of the Placing Agency prior to such placement and obtain an ICPR when needed. When seeking DCS approval, the Contractor must present evidence that Contractor's staff used all avenues to preserve the placement in the program.

Before implementing an approved transfer to a different program or facility, the Contractor will consult with the receiving program staff to promote a successful transition for the Child and to maintain continuity of the specialized services and care unique to the Child.

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

C. Responsibilities for Behavioral Health Services.

(1) The Contractor may only provide behavioral health services if its **Attachment 1** includes a program(s) which include(s) behavioral health services. If the current **Attachment 1** hereto includes a program which include(s) behavioral health services, the Contractor affirms that:

(a) it has the ability and resources to bill for Medicaid Clinic Option ("MCO") and/or Medicaid Rehabilitation Option ("MRO")

(b) any behavioral health services provided by the Contractor, its subcontractors or agents shall be provided in accordance with all Medicaid requirements, the Provider Manual and the most current

version of DCS' service standards ("Service Standards") applicable at the time services are rendered. Service Standards are modified/updated from time to time by DCS. These Service Standards are hereby incorporated by reference and are available in their most current form on the DCS website) at: http://www.in.gov/dcs/files/ATTACHMENT_A_Community-Based_Services_Service_Standards__7_21_11.pdf (or any designated successor link)

(c) it will obtain prior authorization as required and otherwise use its expertise to guide selection and delivery of services to ensure maximum Medicaid reimbursement. Contractor will seek prior authorization from Medicaid for payment of additional units whenever a higher number of units are needed for the Child. This obligation applies irrespective of how behavioral health packages estimate the number of units approved and designated as Medicaid or DCS billable. Contractor 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. Contractor will only seek payment from DCS for such Medicaid-eligible services if Medicaid has denied payment. Contractor will hold invoicing for clients whose Medicaid eligibility is pending. Once an eligibility determination is made, Contractor will bill Medicaid as described above, for those who are eligible. For those who are not Medicaid eligible, Contractor will bill DCS under the approved behavioral health packages. Contractor must submit evidence with the invoice that the child is not Medicaid eligible.

(d) 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 limitations *etc.*)
- timely initiating and communicating with Managed Care Organizations ("MCOs") regarding prior approvals
- timely (at least two weeks prior) notifying DCS of and initiating a redetermination necessary to continue services as patient needs dictate.

(2) The Contractor will bill for behavioral health services in accordance with the behavioral health service categories, caps and packages described in the Provider Manual. DCS will not make a separate referral for behavioral health services even if Contractor partners with another entity to provide or to supplement such services. Contractor should discuss behavioral health services with the Placing Agency before completion of the ICPR. The behavioral health services must be provided by a Medicaid eligible provider. The total number of DCS-approved units does not limit any units billable to Medicaid. However, Contractor shall not exceed and will not be paid by DCS for services beyond the total approved units in a behavioral health package unless Contractor has requested and received FCM and DCS' Clinical Resource Team approval and has received a separate referral for such services.

(3) The Contractor will be paid for therapists' court appearances as described in the Provider Manual. The Provider Manual requires that the therapist be either a physician or HSPP-directed service provider who is eligible to bill Medicaid Clinic Option and has been requested in writing by DCS or probation to attend a court hearing.

(4) The Contractor will be paid for therapeutic visitation as described in the Provider Manual and per the DCS case plan. Therapeutic visitations must be supervised by a master's-level therapist and be designed to assist children and their families in maintaining or reestablishing relationships that are healthy and safe for the child or to assist children in the transition to different family structures, while providing for the safety of the child.

5. General Obligations of the Contractor.

A. Responsibility for Staff. 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 Child, DCS may immediately require a temporary suspension of such member of the Contractor's staff (including any of the Contractor's subcontractors and their staff) or appropriate safety measures pending an investigation into the report.

B. Voluntary Placement Agreements. In the unusual case of any Child that is placed with the Contractor for a voluntary placement agreement (VPA) entered into under IC 31-34-1-16(b) among the Contractor, a Placing Agency, and the Child's parent(s), guardian, or custodian, the provisions of this Contract and the ICPR shall apply to all programs and services provided in accordance with the VPA for which DCS makes any payment, to the extent the provisions of this Contract and the ICPR are not in conflict or inconsistent with the terms and provisions of the VPA.

C. Temporary Absence from Program. If a Child placed for residential treatment services with the Contractor runs away or otherwise leaves the facility-without proper authorization or supervision, or is admitted to a hospital, the Contractor will hold the room and bed in the home which is available for the Child's return for at least five (5) calendar days after the Child has been absent from the facility overnight, unless otherwise directed. This does not include absences due to detention in a juvenile delinquency matter. If the Child does not return to the program within five (5) consecutive days of absence, the Contractor will release the room or bed to which the Child was assigned and terminate the per diem charge for the Child at the facility, unless the Placing Agency and DCS' Regional Manager approve in writing an extension of the time specified in this sub-section.

If a Child placed with the Contractor leaves the facility for the purpose of pre-adoptive visits with a foster home that is licensed, DCS will pay Contractor for the visit days which have been approved by DCS even if DCS is also paying the pre-adoptive home.

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

E. Safeguarding of Information.

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

- (a) The administration of DCS' plan or programs under Title IV-E of the federal Social Security Act;
- (b) Any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of DCS' plan or program under Title IV-E of the federal Social Security Act;

(c) The administration of any other federal or federally assisted program which provides assistance in cash, in kind, or in services directly to individuals on the basis of need;

(d) Any audit or similar activity conducted in connection with the administration of DCS' plan or program under Title IV-E of the federal Social Security Act by any governmental agency or accrediting body authorized by law to conduct such audit or activity, subject to the limitations stated in subparagraph (2) below; or

(e) Reporting and providing information to DCS or other appropriate authorities concerning known or suspected incidents of Child abuse or neglect.

(2) The safeguards provided will prohibit the disclosure of information to any committee or legislative body, other than to an agency referred to in subparagraph (1)(d), above, with respect to an activity described in that clause, which identifies by name or address any applicant for or recipient of assistance under Title IV-E of the Social Security Act.

F. Maximum Length of Stay. Unless a Child's Case Plan calls for a longer period of stay with the Contractor's program or DCS approves an exception, the maximum length of stay in the program shall be six (6) months. The Contractor may submit a request for an extension of the length of placement. A request for extension shall include an explanation of the need for extended placement based on the approved Case Plan and Treatment Plan, permanency needs, and the best interests of the Child. The ICPR for a Child will remain in effect until DCS moves the Child.

G. Transfer of Children. All transfers will be subject to the policies and procedures established by DCS.

All transfers must be approved by DCS and conducted in a manner that protects and maintains the continuity of the specialized services and care unique to the Child. In order for the transfer to occur, the Placing Agency (or agencies) must all agree that a transfer is in the Child's best interest.

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

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

H. Records at Termination of Contract. Upon expiration or termination of this Contract, originals or copies of any documents, files, data, studies or reports prepared by Contractor or any subcontractor, relating to programs or services provided through this Contract, shall be delivered to DCS or its designee, if requested by the State.

6. Consideration.

A. Funding for services to children under this Contract will be provided by DCS. Behavioral health and other services payable by Medicaid must be billed through Medicaid and are not payable under this Contract, unless accompanied by the required Medicaid denial or evidence that the child is not Medicaid eligible and does not have private insurance. DCS will pay service providers directly as provided in 465 IAC 2-16-25 for health and medical services or treatment. Services which are not included in the Payment Rate for Contractor or the approved behavioral health package will be billed as provided in Section 4.C.

DCS will pay the state match for MRO services paid by Medicaid on behalf of DCS and probation youth placed in a residential facility. Any state match related to Medicaid-eligible services will be paid directly to the community mental health center (CMHC) if the CMHC is providing services on behalf of a residential provider that has a residential contract with the department. Any DCS-payable services (not Medicaid eligible, whether because of the type or quantity of service), will be paid directly to the residential provider at the rates stated in this Contract. There is no match for services paid with state dollars

Contractor is obligated to bill Medicaid as described above and, pursuant to 465 IAC 2-16-24, to have DCS authorization to provide educational services.

B. The Payment rate/ Per diem to be paid to the Contractor shall include:

- (1) A "Base Rate," as defined in 465 IAC 2-16-4
- (2) An "Education Rate," where applicable, as described in 465 IAC 2-16-24

In addition, DCS will pay for "behavioral health services" as described in 465 IAC 2-16-23 and as specified in the Provider Manual for the Contractor's program category.

Independent living services are included in the Administrative Payment (465 IAC 2 -16-3 (15)) to Contractor and are set out in Section 4.A. (5) (b) (xii).

C. Amount and Source of Payment. Pursuant to the rule on Rate Setting for Residential Treatment Services Providers, 465 IAC 2-16 *et seq.*, rates will be established on an annual basis and the annual adjustments shall automatically amend this Contract with respect to those rates as provided in 465 IAC 2-16. DCS will pay the Contractor for the services and programs specified in the ICPR and described in Sections 4 and 5 of this Contract based on the Contractor's approved rates as set forth in the current **Attachment 1** and based on **Attachment A** to this Contract (which are hereby incorporated by reference.) In rare cases, DCS may agree to a different Child-specific rate. Except as otherwise provided herein, payments will be made based on claims submitted by the Contractor to DCS in accordance with Section 32 of this Contract.

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

E. Time Period for Payment. Per diem charges for each Child placed under this Contract will begin on the day of the Child's placement with the Contractor and end on the day before the Child's termination with the Contractor's program.

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

G. Travel. All expenses for travel (including transportation, mileage, per diem, and any other incidental expenses) of Contractor or any of its employees, in relation to provision or performance of any services described in this Contract, are included in the service rates described in Section 6 of this Contract.

7. Term.

The term of this Contract is one (1) year beginning January 1, 2012, and ending December 31, 2012.

8. Access to Records.

A. The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable times during this Contract and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

B. Access to Case Records. The Contractor shall grant the State shared access to all case records and other documents described in IC 31-27-6-15 and IC 31-27-2-5 necessary for its license and monitoring by DCS. The Contractor shall grant DCS shared access to all such documents. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to these documents and materials developed and used to assist in the services provided while the materials are in the possession of the Contractor. The Contractor shall provide DCS full, immediate, and unrestricted access to such documents and materials during the term of this Contract and as necessary thereafter.

9. Assignment; Successors; and Subcontracting.

A. The Contractor agrees to bind its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign the whole or any part of this Contract without the State's prior written consent. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one (1) party.

B. The Contractor shall monitor the performance of all subcontractors and shall remain responsible to the State for the performance of any subcontractor. The Contractor agrees to enter into written agreements with all subcontractors and to provide copies of all subcontracting agreements to the State upon request. The Contractor further agrees to notify the State of a breach of these provisions by a subcontractor and to discontinue any agreement with the specified subcontractor in the event of such a breach.

10. Audits and Monitoring.

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 Section 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 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: (1) outcome tracking (including, but not limited to, Outcome Measurement described in Section 4(B)(7); (2) quality review of the services provided by the Contractor pursuant to this Contract; and/or (3) conducting any other requisite and/or desired program and/or service audits of the Contractor.

D. The Contractor shall, upon written demand by State, be required to repay to the State all sums paid by the State to the Contractor, for which adequate fiscal and/or service delivery documentation is not in existence for any time period audited. This may include repayments for use of staff or subcontractors who fail to meet the standards specified hereunder. If an audit of the Contractor results in an audit exception, the State shall have the right to set off such amount against current or future allowable claims, demand cash repayment, or withhold payment of current claims in a like amount pending resolution between the parties of any disputed amount.

E. The Contractor agrees that the State has the right to make recommendations and findings in connection with any financial monitoring or audit of the Contractor's operations, and the Contractor agrees to comply with any corrective actions specified by the State, within the time limits established by the State.

F. The Contractor will provide to the State, upon request, a copy of any document or report prepared and maintained by the Contractor relative to costs incurred in providing the services described in this Contract and its attachments/exhibits.

G. The parties agree that any authorized employee or representative of the State, 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.

H. 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.

I. As required, Contractor shall timely file an "Entity Annual Report" (Form E-1) with the State and the Indiana State Board of Accounts.

J. The Contractor shall maintain financial and accounting records which identify the specific costs attributable to each service component or program listed in the current **Attachment 1**, as well as referenced in the financial attachment (**Attachment A** or its successor). The Contractor shall further maintain, and make available to DCS upon request, a written cost allocation plan, which identifies procedures for attributing costs to each program and service component, and which is consistent with any applicable standards or guidelines contained in the applicable Office of Management and Budget (OMB) Circular or federal procurement regulations 45 CFR Part 74. More restrictive fiscal accountability may be required of the Contractor by DCS should DCS determine that the Contractor is financially unstable, has a history of poor accountability, or has a management system which does not meet the standards required by the state of Indiana or the United States Government.

K. The Contractor shall maintain the funds received pursuant to this Contract in an identifiable bookkeeping account and shall use those funds solely for the purpose set forth in this Contract, in accordance with the terms of this Contract and each ICPR for each Child(ren) served by Contractor.

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

11. 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.

12. Compliance with Laws.

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

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6 et seq., IC § 4-2-7 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. 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, 35-44-1-3, and under any other applicable laws.

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

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDO) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this Section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC 5-22-3-7:

(1) the Contractor and any principals of the Contractor certify that (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of (i) IC 24-4.7 [Telephone Solicitation Of Consumers], (ii) IC 24-5-12 [Telephone Solicitations] , or (iii) IC 24-5-14 [Regulation of Automatic Dialing Machines] in the previous three hundred sixty-five (365) days, even if IC 24-4.7 is

preempted by federal law; and (B) the Contractor will not violate the terms of IC 24-4.7 for the duration of the Contract, even if IC 24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor (A) except for de minimis and nonsystematic violations, 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.

13. Condition of Payment.

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

14. Confidentiality of State Information.

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

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

15. Debarment and Suspension.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State. 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 <http://www.epls.gov/>, (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.

16. 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 the appropriate measures to collect monies due up to and including the date of termination.

17. Disputes.

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. 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.

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 the Indiana Department of Administration. 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 of the parties concludes that the presentation period is over. The Commissioner's decision shall be final and conclusive 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.

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) 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.

18. Employment Eligibility Verification.

As required by IC 22-5-1.7, the Contractor swears or affirms under the penalties of perjury that:

- A. The Contractor does not knowingly employ an unauthorized alien.
- B. 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.
- C. 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.
- D. 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.
- E. 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. Drug-Free Workplace Certification.

As required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace.

False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Grant Agreement 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.

20. Employment Option.

A. For purposes of this Section, “employee” includes all staff working on the duties which are the subject of this Contract, including, but not limited to, the Contractor’s employees working on this Contract, any subcontractors working for the Contractor on this Contract, and any of these subcontractors’ employees or subcontractors.

B. For purposes of this Section, the term “hire” or “hiring” means to hire, to directly contract with, to subcontract with, and/or to procure services through a State managed service provider, State quantity purchase agreement, or its equivalent (as determined by the State).

C. If the State determines at any time during the term of this Contract (including any extensions thereto) that it would be in the State’s best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements or other employment 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).

21. 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.

22. Funding Cancellation.

A. 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. 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, in whole or in part, in accordance with such written determination. 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.

B. This Section does not apply to payments which constitute an entitlement under 42 U.S.C. § 670 et seq. or 42 U.S.C. § 621 et seq.

23. Governing Laws.

This Contract shall be construed in accordance with and governed by the laws of the state of Indiana and suit, if any, must be brought in the state of Indiana.

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, or any of their employees while acting within the scope of their employment, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

25. Independent Contractor.

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers compensation insurance for the Contractor's employees.

26. Insurance.

A. The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverage, 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 errors and omissions coverage for professional conduct, and products or completed operations coverage (if applicable), with minimum liability limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate unless additional coverage is required by the State.

(2) Automobile liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.

(3) The Contractor shall provide proof of such insurance coverage by tendering to DCS Contracting Section, 402 W. Washington Street, Rm. W392, MS 56, Indianapolis, IN 46204 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 issued by the Indiana Department of Insurance.

(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.

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 DCS Contracting Section, 402 W. Washington Street, Rm. W392, MS 56, Indianapolis, IN 46204 before the commencement of this Contract.

27. Licensing Standards.

A. The Contractor, its employees and subcontractors shall comply with all required and applicable licensing standards, certification 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 and/or an ICPR regarding a Child in a placement which is not in full compliance with all required licensing standards; 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 Section 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.

28. Merger and Modification.

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 in 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 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. If appropriate and determined necessary by DCS, an updated **Attachment A** may accompany such notice.

C. As described in Section 6.C and permitted by Administrative Rule, the rates for this Contract may be adjusted annually and/or by appeal. Such adjustments automatically amend this Contract (465 IAC 2-16-20, 28) but may require a revised **Attachment A** to accurately reflect current rates. Should these annual rate/appeal changes require a revised **Attachment A** or should the State (on its own or after it considers a request of the Contractor) determine that any other service code or service component requires modification and such modification requires a revision to the information included in **Attachment 1** or **Attachment A**, 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 the accompanying updated Attachment(s).

D. The parties anticipate that there may be certain mergers, partnerships or other changes that affect the program array which Contractor is available to offer and that such changes may require updated attachments. Such change in program availability 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. If appropriate and determined necessary by DCS, an updated **Attachment 1** and **Attachment A** may accompany such notice.

E. The parties also acknowledge that this Contract is subject to modification by mutual agreement of the parties. Such modifications (excluding the modifications described in subparagraphs B, C and D above) shall be set forth in a written agreement signed by all parties to this Contract. Nothing herein shall be construed as a commitment to execute future agreements with the Contractor or to extend this Contract in any way.

29. Nondiscrimination.

A. Pursuant to the Indiana Civil Rights Law, specifically including 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, and except as permitted by 28 CFR Part 38 "Equal Treatment for Faith-Based Organizations", 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"). Furthermore, the Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services.

B. The Contractor further agrees to comply with all applicable provisions of Indiana Code 22-9; Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d; Title II of the Americans with Disabilities Act, 42 U.S.C. 12134; and all other non-discrimination laws and regulations of the United States and the State of Indiana. In particular, the Contractor will ensure that no person shall, on the grounds of race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran, be excluded from participating in or be denied the benefit of the Contractor's services, or otherwise be subjected to discrimination under any program or activity for which the Contractor or its subcontractors receive, directly or indirectly, state or federal funds. The parties acknowledge that the Placing Agency shall apply its rules for licensing in a manner in conformity with this subsection and that the Contractor may rely on the terms of Contractor's license for any program, with regard to eligibility of any category or classification of children for admission to a particular program.

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

D. The parties agree that any publicity release or other public reference, including media releases, information pamphlets, etc., relative to the services provided under this Contract, will clearly state that all services are provided without regard to race, age, color, religion, sex, disability, national origin, ancestry, or status as a veteran. Nothing herein shall prevent Contractor from complying with the terms of its license with regard to age and gender.

30. Notice to Parties.

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

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

**Regina C. Ashley
Deputy General Counsel
Indiana Department of Child Services
302 W. Washington Street, Room E306, MS 47
Indianapolis, IN 46204
E-mail: Regina.Ashley@dcs.IN.gov**

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.

31. Order of Precedence; Incorporation by Reference.

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

32. Payments and Fiscal Requirements.

A. All payments shall be made in arrears and 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. State fiscal policies and procedures may include agency-specific requirements for submission of documentation to verify working capital, including balance sheets or profit and loss statements as requested by State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC 4-13-2-20. If the Contractor prefers not to have any interest calculated on payments made by the State as permitted by Indiana law and referenced below in Section 33, 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 (1) day before the date the invoice and accompanying claim documentation is delivered or mailed to DCS.

An invoice will not be deemed to be properly prepared if it is not received within ten (10) business days of the date included on the invoice (the "Invoice Date"). Any invoices received 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.

C. Unless otherwise directed by DCS, the Contractor shall submit to DCS, which is responsible for placement of or payment for the Child or children for whom the claim is made, all claims, with appropriate documentation attached showing completion of the service units for which Contractor is requesting payment under this Contract and each applicable ICPR. At a minimum and unless otherwise directed by DCS, the documentation should specify the program and services provided for each Child for whom the claim is submitted, the name of the Child, the dates on which the services were provided, and

the payment rate applicable to the Child, program, and services provided, based on the rates established and approved for the particular program or service as provided in Section 6 of this Contract and specified in the ICPR for the Child.

D. A properly prepared invoice/claim must be submitted to DCS within sixty (60) calendar days after the date services are provided or costs incurred pursuant to this Contract. DCS may elect to deny payment of any invoices/claims that are not timely submitted as required in this Section. In the event the Contractor delays submitting a claim for which it expects third-party reimbursement, the Contractor may submit a written explanation to DCS as to why the claim was not timely submitted. If the claim was delayed because of billing Medicaid for reimbursement that was denied, the explanation must include the specific reason(s) for denial. If DCS deems that such written explanation described above is satisfactory, DCS shall pay otherwise valid claims. In the event that Medicaid has denied reimbursement because the Contractor failed to provide adequate documentation for an otherwise reimbursable claim, DCS will only be liable to pay the amount it would have paid had Medicaid approved the claim.

E. With the exception of costs governed by any Child's individual placement referral, no costs may be incurred by or services provided by the Contractor for payment under this Contract after the expiration date of the term stated in Section 7 of this Contract.

F. Approval and payment of all claims will be conditioned upon receipt and approval by the Placing Agency of all reports and other documents relating to each Child for whom a claim is submitted, as required by any applicable provision of this Contract, the Child's ICPR, the current Case Plan, or the Treatment Plan.

G. The Contractor understands and agrees that payment of all compensation by DCS shall be conditioned upon the Placing Agency's approval of the Contractor's delivery of services and satisfactory performance of this Contract.

H. Contractor acknowledges that failure to properly complete required criminal and background checks on its staff or foster/resource parents can result in DCS being penalized by a being unable to claim IV-E reimbursement. To the extent that DCS cannot claim IV-E reimbursement because of Contractor's inadequate background checks, Contractor must reduce its invoices to DCS. If any unreimbursable costs are invoiced in error, DCS may deny payment. For the purposes of payment pursuant to this section, an invoice containing both reimbursable and unreimbursable costs has not been properly prepared. If DCS has already paid an invoice later determined to have included unreimbursable costs, DCS may offset those unreimbursable costs against any outstanding or subsequently submitted invoices.

I. Contractor 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. Contractor will only seek payment from DCS for such Medicaid-eligible services if Medicaid has denied payment. Contractor will hold invoicing for clients whose Medicaid eligibility is pending. Once an eligibility determination is made, Contractor will bill Medicaid as described above, for those who are eligible. For those who are not Medicaid eligible, Contractor will bill DCS.

J. Any available State match related to Medicaid-eligible services provided pursuant to this Contract may be paid directly to the community mental health center. Contractor will execute any assignment of payment or other form of payment designation necessary to allow such direct payment. Any DCS-payable services (not Medicaid eligible, whether because of the type or quantity of service), will be paid directly to Contractor at the rates on **Attachment A**. There is no match for services paid with State dollars.

33. 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, and IC 34-13-1. The parties agree that for purposes of IC 5-17-5, payment to the Contractor will be timely if made within the time stated in Section 32 of this Contract.

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.

34. Renewal Option.

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

35. Security and Privacy of Health Information.

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 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 maintain the confidentiality of any health records that the Contractor creates, received from the State or any person, or maintains, at any time during the term of this Contract, regarding a Child placed with the Contractor by the State, DCS or other Placing Agency for services and/or treatment in accordance with this Contract and the Child's ICPR, or regarding any member of the Child's family.

C. The Contractor will not disclose any health records to a person other than the State, DCS or other Placing Agency responsible for the care and supervision of the Child or other person to whom the health records relate, except as permitted by applicable provisions of IC 16-39, applicable provisions of 42 U.S.C. § 290dd-2 and 42 CFR Part 2 with respect to any health records that are alcohol or drug abuse records, and any other applicable laws. The Contractor agrees to establish appropriate procedures and

safeguards to ensure compliance with all applicable requirements of IC 16-39, 42 U.S.C. § 290dd-2 and 42 CFR Part 2 and other applicable laws, rules or regulations related to health records (collectively, "Laws"). The Contractor also agrees to report to the State any use or disclosure of health records described in paragraph A of this Section by the Contractor, its agents, employees, or subcontractors, in a manner not authorized by any applicable provision of any laws, whenever the Contractor becomes aware of any improper or unauthorized disclosure.

D. As part of the Contractor's agreement to comply with all applicable requirements of laws relating to PHI with respect to the services and/or treatment it provides or any other task or other activity it performs for the State, DCS or other Placing Agency, including as required by the final Privacy and Security regulations, the Contractor will do the following:

- (1) Not use or further disclose PHI or health records, other than as permitted or required by this Contract or by applicable law;
- (2) Establish appropriate safeguards to prevent use or disclosure of PHI or health records, other than as provided by this Contract or by applicable law;
- (3) Mitigate, to the extent practicable, any harmful effect that is known to the Contractor to have been caused by an improper or unauthorized disclosure of PHI or health records;
- (4) Report to the State any use or disclosure by the Contractor, its agents, employees, subcontractors or third parties, of PHI or health records obtained by the Contractor in connection with services and/or treatment provided under this Contract, in a manner not authorized by this Contract or by applicable law, whenever the Contractor becomes aware of any improper or unauthorized disclosure;
- (5) Ensure that any subcontractors or agents to whom the Contractor provides PHI or health records received from the State, DCS or other a Placing Agency, a service provider, or any service recipient, or created or received by the Contractor on behalf of the State, agree to the same restrictions, conditions and obligations applicable to the Contractor under this Section regarding use or disclosure of PHI and health records;
- (6) Make the Contractor's internal practices, books and records related to the use or disclosure of PHI or health records received from, or created or received by the Contractor on behalf of the State, DCS or other Placing Agency, a service provider, or any service recipient, available to the Secretary of the United States Department of Health and Human Services for purposes of determining the State's compliance with applicable law. The Contractor shall immediately notify the State upon receipt by the Contractor of any such request, and shall provide the State with copies of any materials made available in response to such a request;
- (7) In accordance with procedures established by the State, document and make available the information required to provide an accounting of all disclosures, in accordance with 45 CFR § 164.528 (or other applicable law);
- (8) In accordance with procedures established by the State, make available any PHI in the Contractor's possession for amendment, and incorporate any amendments to PHI in accordance with 45 CFR § 164.526, if the Contractor maintains PHI subject to amendment as provided in the Privacy Rule;
- (9) In accordance with procedures established by the State, make PHI or health records available to any individual entitled to access and who requests access to PHI or health records relating to that individual, in compliance with 45 CFR § 164.524 or applicable provisions of IC §16-39, and consistent with the duties of the Contractor;
- (10) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI that the Contractor creates, receives, maintains, or transmits on behalf of the State;
- (11) Report to the State any security incident(s) of which the Contractor becomes aware that affects the divulging or improper disclosure of PHI; and

E. 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 DCS' HIPAA Compliance Office.

F. At the expiration or termination of this Contract, except for the Contractor's retention of necessary records to maintain compliance with Indiana licensing laws and regulations, the Contractor will return to the source or destroy all PHI or health records obtained or created in relation to services provided under this Contract. If the Contractor or the State determines return or destruction is not feasible, the protections in this Contract shall continue to be extended to any PHI or health records maintained by the Contractor for as long as they are maintained.

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

36. 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.

37. 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.

38. 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 ("IDOA") and the State Budget Agency, whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a termination notice (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 based on the applicable service rates described in Section 6 of this Contract and effective at the time of the Termination Notice. The State will not be liable for payment or reimbursement of the costs of any 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 Section, the parties stipulate and agree that IDOA shall be deemed to be a party to this Contract with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

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

39. Termination for Default and Termination or Suspension for Additional Reasons.

A. Termination for Default. 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:

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, or

Provide or perform the services as specified in this Contract.

B. Termination for Endangering Life, Health, or Safety of Any Person. If the State determines that any action or inaction by the Contractor endangers the life, health, or safety of any person, the State may terminate this Contract by orally notifying the Contractor of the termination, followed by the mailing of written notification thereof within three (3) business days. Termination pursuant to this Section 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 Section 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. The State reserves the right to terminate this Contract should the Contractor's legal status change in any way. Termination pursuant to this Section 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 10 (Audits and Monitoring); Section 12 (Compliance with Laws); Section 16 (Default by State); Section 18 (Employment Eligibility Verification); Section 19 (Drug-Free Workplace Certification); Section 21 (Force Majeure); Section 22 (Funding Cancellation); Section 26 (Insurance); Section 27 (Licensing Standards); Section 29 (Nondiscrimination); Section 35 (Security and Privacy of Health Information); and Section 43 (Criminal and Background Checks).

F. State Only Liable for Payment for Services Properly Provided Prior to Termination. If this Contract is terminated for any reason, the State shall only be liable for payment for services properly provided prior to

the effective date of termination based on the applicable service rates described in Section 6 of this Contract and effective at the time of the termination. The State shall not be liable for any costs incurred by the Contractor in reliance upon this Contract subsequent to the effective date of termination.

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

40. Travel.

All expenses for travel (including transportation, mileage, per diem, and any other incidental expenses) of the Contractor or any of its employees, in relation to the provision or performance of any services described in this Contract, including those expenses related to court appearances, are included in the per diem amounts established in accordance with 465 IAC 2-16 and Section 6 of this Contract.

41. Waiver of Rights.

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.

42. Work Standards.

The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards applicable to the services provided as described in Sections 4 and 5 of this Contract. The Contractor is responsible for ensuring that its employees, agents, and any subcontractors conform to the professional and technical guidelines and standards applicable to all services and programs that the Contractor provides under this Contract, including the program standards and service categories described or referenced in Sections 4 and 5 of this Contract. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on the programs and services being offered under this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

43. Criminal and Background Checks.

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 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 *prior to* the Contractor submitting this Contract for State signature. The checks will be conducted in the manner required for licensed residential child caring institutions, with respect to IC 31-27-3-3, subsections (e)(1) and (f), and the Contractor shall maintain records of information it gathers and receives on Covered Personnel checked pursuant to this Section. The applicable laws and DCS' policies are updated periodically, and the

Contractor shall comply with those current as of the time the background checks are required. Upon request, DCS will furnish the Contractor with information on updates and any changes in policy or procedure. The current procedure requires the Contractor to conduct the following checks:

(1) For all directors/chief executive officers, facility managers and licensing applicants, regardless of their level of contact with children, and 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 Contractor'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 a 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 Sex Offender Registry checks for all states of residency in the past (5) years* (see DCS' website for web links for national and state 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. All checks must be timely initiated, however Contractor may proceed with services hereunder pending responses from local law enforcement agencies (LEAs). Upon receiving a response with negative information, Contractor shall immediately relay any such information to DCS. ;*
- (e) *Register for Fingerprint-Based National and State Checks through the State approved fingerprint vendor* [To do so, Contractor must confirm that it is listed as a current DCS agency with the current state-approved fingerprint vendor. If not, Contractor name will need to be added as a DCS agency prior to registering for fingerprinting.], *and follow through with obtaining fingerprints;* and
- (f) *Review Results of Criminal and Background Checks and take appropriate action.*

(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 a Request for Child Protection Services History Check; for other states, see DCS' website as above);
- (c) *Conduct Sex Offender Registry checks in all state's of residency in the past five (5) years* (see DCS' website for web links for national and state sex offender registry checks); and
- (d) *Review Results of Criminal and Background Checks and take appropriate action.*

(3) For all Covered Personnel and Subcontractors: The Contractor shall require Covered Personnel and subcontractors for this Contract to immediately notify the Contractor 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 Contractor shall immediately relay such notice to DCS. The Contractor 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 relay any previously unreported information to DCS.

Except for A (3) above, the required checks must be performed at time frames required for licensing of your agency.

B. The Contractor 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 Contractor shall maintain a record of the results of each check conducted pursuant to this Section. The Contractor 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. The Contractor shall furnish any other documentation related to background checks as DCS requests. The Contractor has an ongoing obligation to assess job responsibilities and to conduct appropriate checks for employees or volunteers who join the Contractor after this Contract begins. Such staff may **not** provide any services that involve contact with children before the requisite checks have been completed.

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 Contractor 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 Contractor 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 Contractor 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 Contractor requests a waiver of criminal history, DCS will inform the Contractor 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 Contractor chooses to retain such employee or volunteer, that decision may be considered a material breach of this Contract.

G. The Contractor 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 Contractor or by DCS. Any fees paid by DCS on behalf of the Contractor may be offset against any claim for payment submitted by the Contractor under this Contract.

H. Upon request, DCS will assist the Contractor in clarifying the requirements of this Section

44. Environmental Tobacco Smoke.

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.

45. Lobbying Activities.

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 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 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.

46. Religious or Political Activities.

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 the beneficiaries of the programs or services funded with such assistance.

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.

THE REMAINDER OF THIS PAGE HAS BEEN INTENTIONALLY LEFT BLANK

SIGNATURE PAGE

EDS# _____

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the properly authorized representative, agent, member or officer of the Contractor, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of the undersigned's knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

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 hereby agree to the terms thereof.

Contractor, a Residential Treatment Provider

Indiana Department of Child Services

By: _____
Printed Name: _____
Title: _____
Date: _____

By: _____
James W. Payne, Director
Date: _____

Approved by:
Department of Administration

Approved by:
State Budget Agency

By: _____ (for)
_____, Commissioner
Date: _____

By: _____ (for)
_____, Director
Date: _____

*Form approval has been granted by the
Office of the Attorney General pursuant to
IC 4-13-2-14.3(e) on November 18, 2011.
FA 11-71*

This Contract form was prepared by Sheila Elliott Kinney, DCS counsel. This individual Contract was reviewed and approved by agency legal counsel on _____Initial_____