



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

DEPARTMENT OF HUMAN SERVICES

ANN SILVERBERG WILLIAMSON
Executive Director

OFFICE OF FISCAL OPERATIONS
JENNIFER C. EVANS
Director

BUREAU OF CONTRACT MANAGEMENT
STEPHANIE M. CASTRO
Director

Revision Date: August 2016

Log No. _____
DHS Procurement No. _____

Contract No. _____

DHS CONTRACT FOR SERVICES

CONTRACTING PARTIES: This Contract is between the Utah Department of Human Services, which includes (*insert DHS contracting agency name and delete these instructions*) _____ (referred to in this Contract as "DHS" or "DHS/ _____");

AND

Name:
Address:

A (*insert Contractor's legal status (delete all others) and the following language*), ("referred to in this Contract as the "Contractor").

- Sole Proprietor
- For-Profit Corporation
- Charitable Foundation
- Professional Corporation (P.C.)
- Non-Profit Corporation
- Limited Liability Company (LLC):
- Joint Venture
- Partnership
- Other-Specify Type: _____

CONTACTS FOR LEGAL NOTICES:

	CONTRACTOR	DHS
Title		
Telephone		
Email		
Address		195 North 1950 West Salt Lake City, UT 84116

TABLE OF PROVISIONS IN THIS CONTRACT

- PART I: GENERAL PROVISIONS**
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DEPARTMENT OF HUMAN SERVICES

Revision Date: August 2016

ATTACHMENT ____: **Contractor's Budget for (specify the budget period & delete these instructions. NOTE: Budgets for different FYs should be different attachments. If making updates or adding funding to existing budgets within the current funding period, replace the appropriate attachment).**

State of Utah

ATTACHMENT ____:

Self-Insurance Approval (statement from the DHS Deputy

Director)

GARY R. HERBERT
Governor

BUREAU OF CONTRACT MANAGEMENT
STEPHANIE M. CASTRO

Director

SPENCER J. COX
Lieutenant Governor

ATTACHMENT ____:

ATTACHMENT ____:

ATTACHMENT ____:

PART I: GENERAL PROVISIONS

SECTION A: CONTRACT DESCRIPTION AND SPECIFICATIONS

1. **PURPOSE AND SCOPE OF CONTRACT:**

(Briefly describe the services Contractor will provide under this Contract. (Example: "Contractor will provide residential treatment services for 16 clients of the DHS/_____.")and delete these instructions)

The services and activities the Contractor shall provide are described in more detail in Part II and Part III in this Contract.

2. **CONTRACT PERIOD AND RENEWAL OPTIONS:**

a. **Contract Period:** This Contract is effective as of _____ (*insert date*) and terminates on _____ (*insert date*), unless terminated sooner in accordance with the terms and conditions of this Contract.

b. **Contract Renewal:** This Contract may not be renewed.

OR

b. **Contract Renewal:** This Contract may be renewed in accordance with the following terms:

(Pursuant to State Purchasing requirements, must have Purchasing Agent approval to include renewal provisions. Insert contract renewal language here for contracts not entered into pursuant to a procurement and delete these instructions, paragraph b., and the term "OR" above)

3. **AUTHORITY AND PROCUREMENT:**

a. The authority for this Contract is set forth in the Utah Procurement Code, the procurement rules in the Utah Administrative Code, and other related statutes authorizing purchases on behalf of the State.

b. *(Select ONE of the following options and delete both the checkboxes and the other options)*

This Contract was awarded pursuant to procurement # _____.

This Contract was awarded pursuant to procurement # _____, under which DHS/_____ contracts with all qualified entities.

- This Contract was awarded pursuant to sole source procurement # _____.
- This Contract was awarded pursuant to emergency procurement # _____.
- This Contract is with a governmental entity and is exempt from procurement.

4. **TYPE AND AMOUNT OF CONTRACT:**

This Contract is a:

(Select ONE of the following options and delete both the checkbox and other options)

- Non-Fixed Amount/Unit of Service (Rate-Based) Contract.** DHS has not set a limit or cap on the total amount the Contractor may receive for providing services pursuant to this Contract. Payment to the Contractor shall be based on individual units of service provided by the Contractor, payable at the rate(s) specified in this Contract.
- Fixed Amount /Unit of Service (Rate-Based) Contract.** The Contractor shall not be paid more than \$_____ *(insert the fixed amount and delete these instructions)* for providing services pursuant to this Contract. Payment to the Contractor shall be based on individual units of service provided by the Contractor, payable at the rate(s) specified in this Contract. *(For DSAMH Contracts, include the following language and delete these instructions. For all other contracts, delete the following language and these instructions.)* Funding does not carry over from one funding period to the next. Any funds not expended by the end of the funding period for which they were allocated shall lapse and the Contractor shall have no further claim to the same.
- Fixed Amount/Cost Reimbursement Contract.** DHS shall pay the Contractor not more than \$_____ *(insert the fixed amount and delete these instructions)* for providing services pursuant to this Contract. Payment to the Contractor shall be based on allowable costs actually incurred by the Contractor in providing the required Contract services. *(For DSAMH Contracts, include the following language and delete these instructions. For all other contracts, delete the following language and these instructions.)* Funding does not carry over from one funding period to the next. Any funds not expended by the end of the funding period for which they were allocated shall lapse and the Contractor shall have no further claim to the same.
- "Guaranteed Minimum" Contract.** DHS shall pay the Contractor a guaranteed minimum amount of \$_____ *(insert guaranteed amount and delete these instructions)* for providing services pursuant to this Contract. *(For DSAMH Contracts, include the following language and delete these instructions. For all other contracts, delete the following language and these instructions.)* Funding does not carry over from one funding period to the next. Any funds not expended by the end of the funding period for which they were allocated shall lapse and the Contractor shall have no further claim to the same.
- Both Unit of Service (Rate-Based) and Cost Reimbursement.** Payment to the Contractor shall be based in part on individual units of service provided by the Contractor, payable at the

rate(s) specified in this Contract and in part on allowable costs actually incurred by the Contractor in providing the services required pursuant to this Contract.

For the portion of this Contract that is **Cost Reimbursement**, DHS shall pay the Contractor not more than \$_____ (*insert the fixed amount and delete these instructions*). Payment to the Contractor shall be based on the budget(s) attached to this Contract and on allowable costs actually incurred by the Contractor in providing the required Contract services.

(Select the first paragraph below for non-fixed amount Rate-Based services or the second paragraph for fixed amount Rate-Based services; then delete these instructions and the paragraph that does not apply)

For the portion of this Contract that is **Rate-Based**, DHS has not set a limit or cap on the total amount the Contractor may receive. Payment to the Contractor shall be based on individual units of service provided by the Contractor, payable at the rate(s) specified in this Contract.

For the portion of this Contract that is **Rate-Based**, DHS has set a limit or a cap on the total amount the Contractor may receive of \$_____ (insert the fixed amount and delete these instructions) and DHS shall pay the Contractor not more than this amount. Payment to the Contractor shall be based on individual units of service provided by the Contractor, payable at the rate(s) specified in this Contract.

(For DSAMH Contracts, include the following language and delete these instructions. For all other contracts, delete the following language and these instructions.)

Funding does not carry over from one funding period to the next. Any funds not expended by the end of the funding period for which they were allocated shall lapse and the Contractor shall have no further claim to the same.

5. **DHS DISCRETION ABOUT CLIENT PLACEMENTS:** DHS makes no express or implied guarantee or representation that it will place or maintain any clients with the Contractor; that it will refer any clients to the Contractor; or that any clients will select the Contractor to provide or maintain services. The primary consideration in placing clients shall be the client's needs as determined solely in the discretion of DHS.

6. **DOCUMENTS INCORPORATED BY REFERENCE:**
 - a. All documents identified in this Contract.
 - b. All statutes, regulations, and federal policies that apply to this Contract.
 - c. The Contractor's Response to the DHS Procurement.

7. **ORDER OF INTERPRETATION:** In the event of any conflict between this Contract and other documents, the conflict shall be resolved in the following order:
 - a. This Contract and signed amendments.

- b. The DHS Procurement.
- c. The Attachments to this Contract.
- d. The Contractor's Response to the DHS Procurement.

SECTION B: CONTRACTOR'S LEGAL STATUS, TRAINING, INDEMNIFICATION, AND BUSINESS CONTINUITY RESPONSIBILITIES

1. **CONTRACTOR IS AN INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor, and has no authorization, express or implied, to bind DHS or any state agency to any agreements, settlements, or liability. Nothing in this Contract shall be construed to limit the Contractor's authority to bind itself to agreements, settlements or liability, as long as such agreements, settlements or liability affect only itself and not DHS. The Contractor is not authorized to act as an agent for DHS, except as expressly provided in this Contract. Persons employed by DHS and acting under direction of DHS shall not be deemed to be employees or agents of the Contractor. Persons employed by the Contractor and acting under the direction of the Contractor shall not be deemed to be employees or agents of DHS except as expressly provided in this Contract. As an independent contractor, the Contractor is responsible for its own operations and for providing the office space, supplies, equipment, tools, and other supports necessary to provide the services covered by this Contract unless specifically stated otherwise in the Contract.
2. **TAX INFORMATION:** It is the Contractor's responsibility to pay all applicable taxes. If the Contractor needs any information regarding State tax liability, the Contractor should contact the Utah State Tax Commission. If the Contractor needs any information specifically from DHS in order to facilitate the seeking of a State tax exemption, the Contractor may contact the DHS Bureau of Finance.
3. **REGISTRATION WITH UTAH DEPARTMENT OF COMMERCE:** The Contractor shall maintain current registration with the Utah Department of Commerce, Division of Corporations and Commercial Code.
4. **TRAINING FOR CONTRACTOR'S STAFF:** The Contractor shall conduct all necessary training to ensure that its staff carries out its responsibilities under this Contract and that the staff is familiar with the requirements imposed by this Contract and applicable laws.
5. **CONTRACTOR MUST PROVIDE INSURANCE AND INDEMNIFICATION:**
 - a. **Required Insurance.** The Contractor shall maintain adequate protection against liability as specified in this Contract. Specifically, the Contractor shall maintain commercial insurance or self-insurance for the dollar amounts and types of coverage specified in this Contract. Any commercial insurance shall be obtained from insurance companies authorized to do business in the State of Utah and rated "A-" or better with a

financial size category of Class VII or larger, according to the ratings and financial size categories published by A.M. Best Company at the time this Contract is executed.

Commercial insurance may be obtained from an insurance company that does not meet the above stated A. M. Best Company rating and/or class size, **if** the Contractor provides documentation verifying the insurance company providing the Contractor's insurance **is reinsured** by another affiliated insurance company that **does meet** the required rating and class size requirements.

The Contractor's general and professional liability insurance policies shall include an endorsement that names the State of Utah, DHS and their officers, and employees as additional insureds. The additional insured endorsement shall provide the State of Utah, DHS, and their officers and employees with primary coverage (not contributing coverage) for any liability arising as a result of the Contractor's acts or omissions in connection with this Contract. The Contractor is not required to obtain an "additional insured" endorsement for any automobile or Workers' Compensation insurance policy required by this Contract.

If the Contractor is an "individual" providing services of less than 25 hours per week, the additional insured endorsement may omit the requirement that the endorsement be primary coverage. The term individual as used in this subsection means the Contractor provides the services pursuant to this Contract him or herself and does not employ other professionals to provide such services.

- b. **Deductibles and Similar Costs.** The Contractor shall be responsible for paying any deductibles, self-insured retentions or self-insurance costs *and similar items*. The deductibles, self-insured retentions, self-insurance costs, *and similar items* for the insurance policies required by this Contract may not exceed \$10,000.00, unless the Contractor obtains prior **written** approval of a higher amount from the DHS Deputy Director for Support Services who may withhold approval for any reason.
- c. **Types of Liability Protection the Contractor Shall Provide:**
 - (1) **Private Contractor—Commercial Insurance Required:** If the Contractor is not a governmental entity of the State of Utah, the Contractor shall maintain the following policies of liability insurance at its sole expense during the term of this Contract, unless the Contractor has already satisfied the requirements of the self-insurance provision below:
 - (a) *General Liability Insurance:* The Contractor shall maintain a policy of general liability insurance that at a minimum covers the following types of liability: bodily injury or death, personal injury, property damage, broad form property damage, and liability for the property of others in the care, custody and control of the Contractor. The policy shall provide for a combined single limit or the equivalent of not less than \$1,000,000 for each occurrence and \$3,000,000 aggregate. If the Contractor is providing services at more than one site, the general liability insurance must cover each of those sites. If the general liability insurance coverage

obtained by the Contractor is written on a "claims-made" basis, the certificate of insurance shall so indicate, and the policy shall contain an extended reporting period provision or similar "tail" provision such that the policy covers claims reported up to five years beyond the date that this Contract is terminated.

- (b) *Automobile Insurance:* If the Contractor's services involve transporting any clients or goods for DHS, the Contractor shall maintain a policy of automobile liability insurance covering property damage, personal injury protection, and liability for the vehicles used by the Contractor (including owned, hired and non-owned vehicles). The policy shall provide for a combined single limit, or the equivalent, of not less than \$1,000,000. If the Contractor subcontracts with another entity or individual for transportation services, or services that include transportation, the Contractor may satisfy this insurance requirement by submitting proof that its subcontractor has complied with the requirements of the "Insurance and Indemnification" section of this Contract.

If the Contractor provides individual residential care services by contracting with individual residential care homes, the Contractor shall maintain a policy of automobile liability insurance as indicated above, and each of the Contractor's individual residential care homes shall maintain a policy of automobile liability insurance. The automobile liability insurance required of individual residential care homes shall cover property damage, personal injury protection and liability with a combined single limit or the equivalent of not less than \$100,000 per person and \$300,000 for each accident/occurrence occurring during the course of their duties as an individual residential care home. **As used in this provision, the term "individual residential care" refers to twenty-four hour family-based care for one or more clients in foster/proctor care, a host home, or a professional parent setting.**

- (c) *Professional Liability Insurance:* If the Contractor is and/or employs doctors, dentists, social workers, mental health therapists or other professionals to provide services pursuant to this Contract, the Contractor shall maintain a policy of professional liability insurance ("malpractice insurance") with a limit of not less than \$1,000,000 for each occurrence and \$3,000,000 aggregate. This professional liability insurance shall cover damages caused by errors, omissions or negligence related to the professional services provided pursuant to this Contract. If the professional liability insurance coverage obtained by the Contractor is written on a "claims-made" basis, the certificate of insurance shall so indicate, and the policy shall contain an extended reporting period provision or similar "tail" provision such that the policy covers claims reported up to three years beyond the date that this Contract is terminated.

(2) **Self-Insured Private Contractor—No Commercial Insurance Required, But Indemnification and Prior DHS Approval Required:** If the Contractor claims that it is self-insured, the Contractor shall provide DHS with evidence that the Contractor is financially solvent and has established financial arrangements (such as a written comprehensive self-insurance program, performance bonds or fidelity bonds) that will provide DHS with liability protection at least as adequate and extensive as the insurance otherwise required pursuant to this Contract for non-governmental entities. Specifically, the Contractor must show that its ability to process and pay claims adequately, fairly and in a timely manner is comparable to a commercial insurer that provides general liability insurance, automobile insurance and professional liability insurance. Before executing this Contract, the Contractor shall obtain from the DHS Deputy Director for Support Services a written statement indicating that DHS has determined, based on the Contractor's financial evidence and representations, that the Contractor's self-insurance arrangements and indemnification agreements are sufficient to satisfy the requirements of this Contract, and the Contractor is therefore not required to obtain additional commercial liability insurance naming DHS as an insured party. If it sees fit, DHS may include in this statement any additional conditions designed to ensure that the Contractor's self-insurance arrangements are comparable to the insurance required of other non-governmental contractors. A copy of the Deputy Director's statement is attached to this Contract, and is a material provision of this Contract. Nothing in this provision shall be construed to require DHS to consent to any self-insurance arrangements, and DHS may withhold its approval for any reason.

d. **All Contractors--Workers' Compensation:** The Contractor shall comply with the Utah Workers' Compensation Act which requires employers to provide workers' compensation coverage for their employees.

e. **Indemnification.** Regardless of the type of insurance required by this section, the Contractor (and where applicable, the subcontractor) agrees to the following indemnification:

(1) **Indemnification by Non-Governmental Contractor:** If the Contractor is not a governmental entity of the State of Utah, the Contractor agrees to and shall defend, hold harmless and indemnify the State of Utah, DHS, DHS/_____ and their officers and employees from and against any losses, damages, injuries, liabilities, suits, claims and proceedings arising out of the performance of this Contract or which are caused in whole or in part by the acts, failure to act, or negligence of the Contractor's officers, agents, volunteers, or employees, except where the claim arises out of the sole negligence of DHS.

(2) **Indemnification by Governmental Contractor:** If the Contractor is a governmental entity of the State of Utah and subject to the Utah Governmental Immunity Act ("GIA"), there is no indemnification required and the Contractor and DHS shall each be responsible for their own actions and defense of any claims or suits to the extent required by the GIA. Nothing in this Contract shall be construed as a waiver by either party to this Contract of any rights, limits,

protections or defenses provided by the GIA nor shall this Contract be construed, with respect to third parties, as a waiver of any governmental immunity to which a party to this Contract is entitled.

- (3) **Definition of the Term "Claim":** As used in these "Indemnification" provisions the term "claim" includes any and all claims, losses, damages, liabilities, judgments, costs, expenses, attorneys' fees and causes of action of every kind or character (including personal injury, death, and damages to property or business interests) arising because of, out of, or in any way connected with the performance of this Contract or with a party's failure to comply with the provisions of this Contract.
- (4) **Defense of Suits Brought Upon Claims:** The Contractor shall defend all suits brought upon claims and shall pay all costs and expenses including attorney's fees, but DHS shall have the option to participate in the defense of any such suit in which DHS perceives that its interests are not being protected by the Contractor or where the Contractor believes, asserts, or claims that the claim arises out of the sole negligence of DHS. In the latter situation, the Contractor shall notify DHS within 90 days of receiving notice of the claim against it that the Contractor believes, asserts or claims that the claim arises out of the sole negligence of DHS. In the event the Contractor fails to notify DHS within this timeframe, the Contractor shall defend and indemnify DHS even if the claim arises out of the sole negligence of DHS. The participation by DHS in the defense of a claim does not relieve the Contractor of any obligation pursuant to this Contract. However, if DHS elects to retain independent counsel, DHS shall pay the attorney's fees and costs associated with such counsel except where DHS retains independent counsel due to a claim by the Contractor that the claim arises out of the sole negligence of DHS. If a finding is later made that the claim did not arise out of the sole negligence of DHS, the Contractor shall reimburse DHS for all costs including attorney's fees incurred by DHS.
- (5) **No Subrogation or Contribution:** The Contractor has no right of subrogation or contribution from the State or DHS for any judgment rendered against the Contractor.

- f. **Insurance Required of Subcontractors.** The Contractor shall require its subcontractors to satisfy the insurance and indemnification requirements applicable to them. For example, if the Contractor is a governmental entity and the subcontractor is a private entity, the Contractor shall comply with the insurance and indemnification provisions applicable to governmental entities, and shall require the subcontractor to comply with the insurance and indemnification provisions applicable to non-governmental entities.
- g. **Certificate of Insurance, "Additional Insured" Endorsement and Evidence of Continued Coverage.** Before signing this Contract, a non-governmental contractor shall obtain from its general and professional liability insurer(s) and shall provide to DHS/_____ certificates of insurance and "additional insured" endorsements that indicate that the required coverage is in effect and that the insurer shall give

DHS/_____ 30 days notice of any modification, cancellation or non-renewal of the policy. On an annual basis and upon request from DHS/_____, a non-governmental contractor shall provide DHS/_____ with evidence that the Contractor or subcontractor has the insurance coverage required by this Contract. Governmental entities are not required to provide certificates of insurance, "additional insured" endorsements or evidence of continued coverage. Before entering into any subcontracts for the provision of services pursuant to this Contract, the Contractor shall ensure its subcontractors obtain and provide the same additional insured endorsements from their general and professional liability insurer(s) that meet the requirements as indicated in this Paragraph.

6. **EMERGENCY MANAGEMENT AND BUSINESS CONTINUITY PLAN:** The Contractor shall use qualified personnel to perform all services in conformity with the requirements of this Contract and generally recognized standards. **The Contractor's performance shall not be excused by force majeure.** The Contractor shall identify the critical functions or processes of its business operations essential for providing the services required in this Contract. The Contractor shall also develop an emergency management and business continuity plan ("plan") that will allow the Contractor to continue to operate those critical functions or processes during or following short-term or long-term emergencies, periods of declared pandemic, or other disruptions of normal business. The plan shall address at least the following areas as they pertain to the services Contractor is providing:
- a. Evacuation procedures;
 - b. Temporary or alternate living arrangements, including arrangements for isolation or quarantine;
 - c. Maintenance, inspection, and replenishment of vital supplies, including food, water, clothing, first aid supplies, and other medical necessities, including client medications, and the supplies necessary for infection control or protection from hazardous materials, etc.;
 - d. Communications (with Contractor staff, appropriate governmental agencies, and clients' families);
 - e. Transportation;
 - f. Recovery and maintenance of client records; and
 - g. Policies and procedures that:
 - (1) ensure maintenance of required staffing ratios;
 - (2) address both leave for, and the recall of, Contractor's employees unable to work for extended periods due to illness during periods of declared pandemic; and
 - (3) ensure the timely discharge of the Contractor's financial obligations, including payroll.

In addition, the Contractor represents that it provides at least annual training for its staff on its plan and it acknowledges that DHS may rely upon this and the other representations of the Contractor in this paragraph.

The Contractor shall provide DHS/_____ with a copy of its plan upon execution of this Contract. The Contractor shall evaluate its plan at least annually. Any modifications to the Contractor's plan shall be provided to DHS/_____ within 15 days of the time the modifications are made.

SECTION C: CONTRACTOR'S COMPLIANCE WITH APPLICABLE LAWS AND DHS POLICIES

1. **COMPLIANCE WITH APPLICABLE LAWS:** The Contractor shall comply with all applicable laws. The term "applicable laws" refers to all federal and state statutes, regulations, and executive orders that apply to the Contractor's activities or that impose restrictions on the Contractor's use of federal or state funding or grants. It is the Contractor's responsibility to obtain legal advice about the laws governing its activities.
2. **CERTIFICATION OF NON-DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any governmental entity. If the Contractor cannot so certify, the Contractor shall submit a written explanation and shall obtain *prior* written approval for this Contract from the DHS Deputy Director for Support Services. Failure of the Contractor to obtain such prior written approval shall be considered a material breach of this Contract.
3. **COMPLIANCE WITH BYRD ANTI-LOBBYING AMENDMENT:** Title 31 United States Code (USC) § 1352 requires Contractors with a contract in excess of \$100,000 to certify that they will not and have not used government appropriated funds to influence an officer or employee of any agency in connection with obtaining a contract, grant, or award. If Contractor meets the criteria for disclosure set forth in the above-cited section, Contractor shall complete and submit to the required federal entity, a Disclosure of Lobbying Activities form. Both this form and instructions for completing it can be found at the following website: <http://www.whitehouse.gov/omb/grants/sflllin.pdf>
4. **DEFICIT REDUCTION ACT - MEDICAID FRAUD AND ABUSE:** The Contractor shall meet requirements for *Medicaid-specific Federal Assurances*, Section 6032 of the Deficit Reduction Act of 2005 (Employee Education About False Claims Recovery). The Contractor shall educate its employees, agents, and subcontractors about:
 - a. The False Claims Act, 31 United States Code §§3729–3733;
 - b. Administrative Remedies For False Claims and Statements, 31 United States Code §§3801–3812;
 - c. The Utah False Claims Act, Utah Code § 26-20-1, et seq.;

- d. The Utah Protection of Public Employees Act, Utah Code § 67-21-1, et seq.;
- e. Policies and procedures for detecting and preventing fraud, waste, and abuse;
- f. How to report suspected fraud, waste and abuse of Medicaid funds;
- g. The whistleblower protections afforded employees that report suspected fraud, waste, and abuse of Medicaid funds in good faith; and
- h. The penalties for filing false or fraudulent claims for Medicaid payment.

If the Contractor maintains an employee handbook, the Contractor shall include the information described above and its policies and procedures for detecting and preventing Medicaid fraud, waste and abuse, in its employee handbook.

Additional information is available on the DHS website.

5. **FEDERAL FUNDING ACCOUNTABILITY AND TRANSPARENCY ACT (FFATA):** If any of the funds received by the Contractor pursuant to this contract are identified as Federal awards the Contractor shall comply with the FFATA requirements applicable to sub-awardees and shall provide DHS with the following information, updating it as changes occur:
- a. The Contractor's Data Universal Numbering System (DUNS) number;
 - b. The names and compensation of the Contractor's five most highly compensated executives *whenever the Contractor meets the criteria identified in FFATA for reporting executive compensation data*; and
 - c. The Contractor's principal place of performance.

Information entered by DHS in the Federal Funding Accountability and Transparency Act Sub-award Reporting System (FSRS) can be viewed at the following website: USAspending.gov.

6. **COMPLIANCE WITH PRO-CHILDREN ACT OF 1994:** “In accordance with Part C of Public Law 103-227, the “Pro-Children Act of 1994”, smoking may not be permitted in any portion of any indoor facility owned or leased or contracted by an entity and used regularly for the provision of health, day care, education, or library services to children under the age of 18 if the services are funded by Federal programs whether directly or through State or local governments. Federal programs include grants, cooperative agreements, loans and loan guarantees, and contracts. The law does not apply to children’s services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug and alcohol treatment.” By signing this Contract, the Contractor certifies that it will comply with the requirements of this Act.
7. **HUMAN SUBJECTS RESEARCH:** The Contractor may not conduct any research involving human subjects or their private data if the subjects are employees of DHS or individuals receiving services (whether direct or contracted) from DHS or individuals receiving services

funded by DHS, unless the Contractor has obtained prior written approval from the DHS Institutional Review Board (IRB), and from any other federal or state agencies whose approval is required for research on human subjects. Before conducting such research, the Contractor shall fully comply with any requirements or conditions, including requirements relating to informed consent, imposed by such IRB committees or agencies.

8. **COMPLIANCE WITH LICENSING STANDARDS AND OTHER LAWS:** The Contractor represents that it currently meets all applicable licensing standards and other requirements of federal and state law, and all applicable ordinances of the city or county in which services or care is provided. The Contractor shall continue to comply with all such standards, requirements and ordinances during the term of this Contract, and if the Contractor fails to do so, DHS may terminate this Contract immediately.
9. **COMPLIANCE WITH BACKGROUND SCREENING REQUIREMENTS:** The Contractor shall ensure that individuals associated with the Contractor will have no direct access to a child or vulnerable adult except as defined and authorized by Utah Code 62A-2-101 and 120.
10. **COMPLIANCE WITH UTAH 211 INFORMATION REQUESTS:** The Contractor shall provide Utah 211 with information about the Contractor's services for inclusion in the Utah 211 statewide information and referral system. Information shall be provided in the form determined by Utah 211.
11. **CONTRACT INFORMATION:** DHS shall provide contact information to the Department of Workforce Services (DWS). The Contractor shall provide DWS with job vacancy and contact information upon request from DWS in accordance with Utah Code § 35A-203.
12. **REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify," only applies to contracts issued through a Request for Proposal process, and to sole sources included within a Request for Proposal. It does not apply to Invitation for Bids nor to the Multiple-Stage bid.
 - a. Status Verification System
 - (1) Contractor certifies as to its own entity, under penalty of perjury, that it has registered and is participating in the Status Verification System to verify the work eligibility status of the Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Utah Code § 63G-12-302.
 - (2) The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Utah Code § 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

- (3) Manually or electronically signing this Contract is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws, including Utah Code § 63G-12-302.

b. Indemnity Clause for Status Verification System

Contractor (includes, but is not limited to any Contractor or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Contractor's subcontractor or subconsultant at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

13. **COMPLIANCE WITH PROVIDER CODE OF CONDUCT:** The Contractor shall follow and enforce the Provider Code of Conduct.

- a. Before allowing any employee or volunteer to work with clients pursuant to this Contract, the Contractor shall also comply with the following requirements:
 - (1) The Contractor shall provide a current copy of the Code of Conduct to each employee or volunteer currently working for the Contractor and to any new employees or volunteers; and
 - (2) The Contractor shall retain in each employee or volunteer's file a signed and dated statement in which that person certifies that he or she has read and understands the Code of Conduct and will comply with it.
- b. As used in this Paragraph, "volunteer" means a person who:
 - (1) donates services to the Contractor without pay or other compensation, except for expenses incurred (such as meals and other travel costs); and
 - (2) is a board member, officer, or other person who is substantially involved in the Contractor's decision-making processes, or is a person who has direct unsupervised contact with DHS/_____ clients.
- c. Annually, the Contractor shall obtain a copy of the current DHS Provider Code of Conduct poster. Contractor shall prominently display the poster where its employees and volunteers can see it. (A copy of the current DHS Provider Code of Conduct poster may be downloaded at the following web site: <http://hsofo.utah.gov/services/contract-information/>.)
- d. If the Contractor is a Utah governmental entity, the Contractor may enforce its own written Code of Conduct for the provision of these services, which at least includes the

elements of the DHS Provider Code of Conduct and is at least as stringent as the DHS Provider Code of Conduct.

14. **RESTRICTIONS ON CONFLICTS OF INTEREST:** The Contractor shall not enter into any transaction that is improper or gives the appearance of being improper because of a conflict of interest.

a. **Definitions**

- (1) **“Business Entity”** is as defined in Utah Code § 67-16-3.
- (2) **“Conflict of Interest”** means any situation where the Contractor has economic, social, political, familial, legal or other interests which interfere with, or have the potential to interfere with, the exercise of the Contractor’s duties, responsibilities, or judgment in connection with this Contract, or which involve conflicting loyalties to the Contractor and to another interest. “Conflict of Interest” also includes any violation of the Ethics Acts.
- (3) **“Contractor”** includes all "representatives" of the Contractor.
- (4) **“Disclosure Statement”** means a written statement provided to DHS by the Contractor about a Conflict of Interest. “Conflict of Interest Certification” and “Conflict of Interest – Disclosure Statement” forms are available from the DHS/_____ Contract Representative.
- (5) **“Ethics Acts”** means the Utah Public Officers’ and Employees’ Ethics Act (Utah Code § 67-16-1 et. seq.) and the Municipal Officers’ and Employees’ Ethics Act (Utah Code § 10-3-1301 et. seq.).
- (6) **“Related Party”** means:
 - (a) any person related to the Contractor’s representative by blood or marriage including father, mother, husband, wife, son, daughter, sister, brother, grandfather, grandmother, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, uncle, aunt, nephew, niece, grandson, granddaughter, or first cousin; and
 - (b) all business associates of the Contractor:
 - (i) who are partners, directors, or officers in the same business entity as the Contractor;
 - (ii) who have authority to make decisions or establish policies in the same business entity as the Contractor; or
 - (iii) who directly or indirectly own 10% or more in the same business entity as the Contractor.

- (7) **“Representative”** means any person or entity acting on behalf of the Contractor, and includes all employees, owners, partners, directors, officers, board members, subcontractors and agents, as well as any individuals with authority to establish policies or make decisions for the Contractor. “Volunteers” are not “representatives” and are not required to be included in the Contractor’s Disclosure Statement, unless they are board members or officers, or are substantially involved in the Contractor's decision-making processes.
 - (8) **“Volunteer”** means a person who donates services to the Contractor without compensation, except for expenses incurred (such as meals and travel costs).
- b. **Compliance with the Ethics Acts.** The Contractor shall comply at all times with the applicable provisions of the Ethics Acts.
- c. **Contractor Conflict of Interest Policy and Internal Review.** The Contractor shall implement a written policy that requires:
- (1) Its representatives to submit a disclosure statement upon hire and annually thereafter;
 - (2) Its representatives to immediately disclose in writing to the Contractor all existing, potential, and contemplated conflicts of interest as they arise.
 - (3) Annual review of all disclosure statements and its own operations to reasonably assure DHS that the Contractor avoids prohibited conflicts of interest.
 - (4) Disclosure statements to be maintained in its personnel files.
 - (5) The Contractor to train its representatives regarding:
 - (a) The conflict of interest concept and the certification/disclosure requirements of this Contract; and
 - (b) The applicable provisions of the Ethics Acts.
- d. **Restrictions on Conflicts of Interest.** Transactions involving Conflicts of Interest are prohibited to the extent they are the result of undue influence, or have the potential to result in increased costs, decreased performance, the appearance of impropriety, or any other disadvantage to DHS. Conflicts of Interest can occur in one of three ways:
- (1) **Dual Employment.** Conflicts of interest can occur when a Contractor’s representative is also employed by the State of Utah or by another of the Contractor's representatives.
 - (2) **Related-Party Transactions.** Conflicts of interest occur when the Contractor makes payments to a related party using money obtained from DHS through this Contract. Conflicts of interest also occur when transactions, which affect the

performance of this Contract, are made between the Contractor and a related party, whether or not payments are involved.

- (3) **Independent Judgment Impaired.** Conflicts of interest occur when a Contractor's representative participates in any transaction on the Contractor's behalf and has a significant relationship or shared interest with another party to the transaction, which could affect the representative's ability or willingness to exercise independent judgment, and which may affect the performance of this Contract. Independent judgment may also be impaired when the Contractor or the Contractor's representative is involved in any administrative or legal action pending against the State, DHS, or any of their officers or employees.

e. **Disclosing Conflicts of Interest to DHS:**

- (1) **Requirements for *Governmental Entities*.** Before entering into this Contract or a subcontract related to this Contract, and annually thereafter, a governmental Contractor and any *governmental* subcontractors shall:
 - (a) Submit to DHS a written certification that they maintain a written policy as required above, monitor for compliance with the conflict of interest provisions of this Contract, and reasonably assure DHS that representatives (including any non-governmental subcontractors) with a potential conflict of interest do not:
 - (i) make or influence decisions or set policies that affect this Contract;
 - (ii) monitor the performance of this Contract; or
 - (iii) become involved in or otherwise benefit from the performance of this Contract; and
 - (b) Disclose to DHS any existing or potential conflicts of interest that relate to this Contract or the services provided pursuant to this Contract by submitting a Disclosure Statement in accordance with the requirements for non-governmental entities, and complying with the requirements regarding the continuing duty to disclose these conflicts of interest.
- (2) **Requirements for *Non-Governmental Entities*:** Before entering into this Contract, or a subcontract related to this Contract, a non-governmental Contractor shall submit a Disclosure Statement to DHS/_____ in which the Contractor or, when applicable its subcontractor, discloses any existing or potential conflicts of interest, including all information required by the Ethics Acts and this Contract.
 - (a) **For Conflicts of Interest Involving Dual Employment,** the following information is required:

- (i) the name of the representative engaged in dual employment;
 - (ii) the titles or positions held by the representative engaged in dual employment;
 - (iii) the representative's decision-making or monitoring authority with the employing entities, and how that representative's authority affects this Contract or any subcontract relating to this Contract; and
 - (iv) the measures taken to avoid potentially adverse effects resulting from the representative's dual employment.
- (b) **For Conflicts of Interest involving Related-Party Transactions or Independent Judgment Impaired**, the following information is required:
- (i) the name of the representative having the conflict of interest;
 - (ii) the name of the other party to the conflict of interest;
 - (iii) the relationship between the individuals identified in (i) and (ii) above;
 - (iv) the nature and value of the interest (if any) held by the representative in the other business entity;
 - (v) a description of the transaction to which the conflict of interest applies and the dollar amount involved (if any);
 - (vi) the decision-making or monitoring authority of the representative and the party identified in (ii) above, with respect to the applicable transaction or decision;
 - (vii) the potential effect of the conflict of interest on this Contract or any subcontract relating to this Contract; and
 - (viii) the measures taken by the Contractor to avoid potentially adverse effects resulting from the identified parties' relationship.
- (c) If the Contractor has no conflicts of interest, the Contractor shall so indicate on the Disclosure Statement. By submitting a Disclosure Statement, the Contractor is certifying to DHS that it has checked its organization and has required its representatives to disclose their conflicts of interest, and that it has disclosed all known conflicts of interest to DHS.
- f. **Continuing Duty to Disclose Conflicts of Interest.** The Contractor and its subcontractors have a continuing duty to immediately review updated Disclosure Statements and submit a copy to DHS whenever an existing or potential Conflict of Interest is disclosed. The Contractor shall require its subcontractors to provide an updated Disclosure Statement to the Contractor, if at any time during the term of this Contract, they contemplate any transaction involving a potential conflict of interest, or hire or affiliate with any individual with an existing or potential conflict of interest, or discover any existing conflict of interest.

- g. **Monitoring Compliance.** In addition to the remedies outlined in this Contract, DHS retains the right to do any of the following if DHS determines that a conflict of interest may exist:
- (1) Investigate any potential conflict of interest;
 - (2) Require further information from the Contractor or the subcontractor;
 - (3) Require specific remedial action; or
 - (4) Disapprove identified transactions or require repayment of identified transactions.

SECTION D: ACCESS TO RECORDS, COMPLIANCE MONITORING, AND RECORD KEEPING RESPONSIBILITIES

1. **ACCESS TO RECORDS AND MONITORING OF PERFORMANCE:** DHS shall have immediate access to all records relating to this Contract, and the Contractor shall not limit or interfere with DHS' access rights.

DHS shall have the right to monitor the Contractor's performance pursuant to this Contract. Monitoring of Contractor's performance shall be at the complete discretion of DHS. Performance monitoring may include both announced and unannounced visits. The Contractor shall allow independent auditors State and federal auditors or contract reviewers to have access to any records related to this Contract, including all personnel, training, client, treatment and financial records (such as accounting records and supporting documentation) for audit review and inspection.

2. **RECORD-KEEPING AND REPORTING REQUIREMENTS:** The Contractor shall comply with all record-keeping and reporting requirements of this Contract. The Contractor shall maintain or shall supervise the maintenance of all records necessary for the proper and efficient operation of the programs covered by this Contract, including records relating to screenings, assessments, applications, determination of clients' eligibility (if applicable), the provision of services, treatment, administrative costs, and any other records, such as statistical and fiscal records, necessary for complying with the reporting and accountability requirements of this Contract.
3. **RETENTION OF RECORDS:** The Contractor shall retain all records related to this Contract for at least the following periods of time:
- a. **Records Relating to Adult Clients:** The Contractor shall retain all adult client records (including records that support Title XIX reimbursements) for at least six years from the date of last service to the adult client.
 - b. **Records Relating to Child Clients:** The Contractor shall retain all records relating to clients under 18 years old (including records that support Title XIX reimbursements) for

at least six years from the date of last service to the child client, or until the child client reaches the age of 22, whichever period is longest.

- c. **Administrative Records:** The Contractor shall retain all administrative records relating to this Contract (including records that support Title XIX reimbursements) for at least six years after DHS makes the last payment on this Contract.

- d. **Discontinued Operations:** If the Contractor discontinues its programs or ceases to provide services pursuant to this Contract, the Contractor shall protect DHS access rights by implementing one of the following options:
 - (1) Transfer the client records to a successor agency or entity which has:
 - (a) entered into a contract with DHS/_____ to provide such services formerly provided by the Contractor; and
 - (b) agreed to provide DHS with the same access to the records as required under the Contractor's contract with DHS/_____; or
 - (2) Deliver the client records to an office within the Contractor's organization under an arrangement by which the Contractor authorizes DHS to have continuing immediate access to the records.
 - (3) With the prior written consent of DHS/_____, which may be withheld for any reason, deliver the client records to DHS/_____.
 - (4) **Alcohol and Drug Abuse Patient Records:** If the Contractor is bound by the requirements of 42 C.F.R. Part 2 and discontinues its alcohol or drug abuse program or ceases to provide its services pursuant to this Contract, the Contractor shall comply with the following requirements before destroying the records of any patients served pursuant to this Contract:
 - (a) the Contractor shall notify DHS/_____ in writing at least 30 days before it discontinues its operations or ceases to provide its services;
 - (b) upon request from DHS, the Contractor shall give each of its alcohol and drug abuse patients a consent form which meets the requirements of 42 C.F.R. § 2.31, and which authorizes the Contractor to transfer its patient records to DHS/_____; and
 - (c) upon obtaining signed consent forms from patients, the Contractor shall deliver the consenting patients' records to DHS/_____.

- e. **Audits and Litigation:** The Contractor shall maintain all records related to any audits initiated by federal and state auditors or to any pending litigation until six years after all audits are completed or litigation is resolved, including any related appeals or the time for appeal has expired, or for six years from the date of termination of this Contract, whichever is longer.

f. **Method for Destruction of Client Records:** Client records which may be destroyed pursuant to this Contract shall be cross-shredded or burned to protect client confidentiality. In the case of electronic records, the Contractor shall use a technique of destroying the records that adequately prevents unauthorized persons from reading or accessing the records.

4. **PROTECTING THE CONFIDENTIALITY OF CLIENT RECORDS:** Client records are confidential. The Contractor shall restrict access to client records in accordance with State and federal laws. Client records include but are not limited to hard copy records, electronic data, audio and video tapes, digital files, photographs, scans, and other images. The Contractor shall, at a minimum, maintain all client records in locked rooms or cases or in password-protected electronic files. If records are transported or contained on any electronic medium (including but not limited to computers, tablets, smart phones, zip-drives, etc.) the medium shall be password protected. The Contractor shall not use or disclose any client information except as specifically provided by this Contract, or as required by law. The Contractor's representatives shall have access only to those portions of the records directly related to their work assignments.

5. **LOSS OR DISCLOSURE OF CLIENT RECORDS OR INFORMATION:** The Contractor shall have and comply with policies and procedures to protect confidential client records and information from loss, unauthorized disclosure, or data breaches (hereinafter collectively referred to as "loss"), and shall make those policies available to DHS. The policies and procedures shall address how client records and information will be maintained, transmitted, stored, and secured to protect against any loss. The policies and procedures shall also address the steps that will be taken in the event of any loss to notify, protect and reimburse those impacted by the loss against potential damages as well as to prevent future losses.

The Contractor shall be responsible for any loss of client records or client information by it or its representatives and for any and all costs, remediation (including but not limited to credit monitoring), and damages associated with such loss. In the event of a loss, in addition to any actions required by the Contractor's policies and procedures, the Contractor shall notify the following individuals of the loss no later than 24 hours after it is discovered:

- a. The DHS Contact Person identified on the front of this Contract;
- b. The DHS Risk Manager in the DHS Office of Fiscal Operations; and
- c. The client or the client's parent(s) or legal guardian.

SECTION E: SUBCONTRACTING, ASSIGNMENT, AMENDMENTS, AND DISPUTE RESOLUTION PROCEDURES

SUBCONTRACTS:

- a. **Definition of "Subcontractor":** As used in this Contract, "subcontractor" means an individual or entity that has entered into an agreement with the Contractor to perform

services for which the Contractor is responsible pursuant to the terms of this Contract. "Subcontractor" also refers to individuals or entities that have entered into agreements with any subcontractor **if** those individuals or entities perform any of the subcontractor's duties pursuant to this Contract.

b. **Is Subcontracting Allowed:**

(Insert ONE of the three options below, delete the checkbox and these instructions)

- The Contractor may not subcontract to provide the services specified in this Contract.
- The Contractor may subcontract to provide the services specified in the contract. However, Contractor must notify DHS/_____ in writing of plans to enter into any subcontracts and must obtain DHS/_____ approval prior to entering into any subcontracts.
- The Contractor is a subrecipient. As a subrecipient, the Contractor may enter into subcontracts with other individuals or entities to provide the services required by this Contract and other state and federal laws.

c. **When Subcontracting Is Allowed:** If Contractor is allowed to subcontract under Paragraph 1.b. above, the following provisions apply:

- (1) **Contractor Responsibilities Regarding Subcontracts.** The Contractor retains full responsibility for contract compliance, whether the services are provided directly or by a subcontractor.
- (2) **Provisions Required in Subcontracts.** When the Contractor subcontracts and pays the subcontractor for goods or services through federal and state funds, the Contractor shall, at a minimum, include provisions in its subcontract that require the subcontractor to comply with all:
 - (a) provisions of this Contract including the insurance and indemnification provisions; and
 - (b) applicable laws and contract provisions identified in 45 C.F.R. § 92, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments".

2. **CONTRACT ASSIGNMENT:** The Contractor may not assign its benefits or obligations pursuant to this Contract to any other entity, without the prior written consent of both the DHS/_____ Director and the DHS Purchasing Agent, which may be withheld for any reason.

- a. No contract assignment shall be binding upon DHS until the following requirements have been met:

- (1) The Contractor submits its request to assign the Contract to DHS/_____ on the "DHS Consent to Contract Assignment" (Contract Assignment) form;
 - (2) The proposed Assignee submits all documentation required by the original procurement, demonstrating that it meets all contract qualifications and has the capability to provide all contract services;
 - (3) DHS/_____ evaluates the proposed Assignee's documentation and makes a recommendation to the DHS Purchasing Agent as to whether the proposed Assignee is qualified and capable of complying with all Contract requirements;
 - (4) The DHS Purchasing Agent reviews DHS/_____ recommendation and determines in writing that the assignment does not appear to violate procurement rules;
 - (5) The DHS/_____ Director approves the assignment by signing the "Contract Assignment" form.
- b. Upon execution of the Assignment Agreement between the assignor and assignee and written approval by DHS/_____ as evidenced by execution of the "DHS Consent to Contract Assignment" form:
- (1) Assignor shall have no further authority to perform pursuant to this Contract and shall make no claim for benefits arising from this Contract; and
 - (2) The DHS Consent to Contract Assignment form shall be made a part of this Contract by amendment.

Notwithstanding any agreement between the assignor and assignee, DHS may hold the assignor and assignee jointly and severally responsible for all obligations, losses, damages, injuries, liabilities, suits, claims and proceedings arising out of the performance of this Contract. This provision shall survive the termination of this Contract.

3. **CONTRACT AMENDMENTS:** The parties may modify this Contract only by written amendment signed by the parties and approved by the DHS Bureau of Contract Management with the exception of Paragraphs a., b., and c. below. Any amendments shall be attached to the original signed copy of this Contract.
- a. **Federal or State Budgetary Action:** If federal or State budgetary action necessitates or requires a change in the service rates or the payments to be made pursuant to this Contract, DHS shall advise the Contractor of the change via written notice signed by the DHS/_____ Director. The notice shall identify the new rates or payments, and the effective date of the change. **A notice issued pursuant to this paragraph shall constitute an amendment to the Contract without the Contractor's signature.**
 - b. **Utah State Department of Health (DOH) Mandated Changes to Medicaid Rates:** If the DOH requires a change in any Medicaid rates in this Contract, DHS shall advise the

Contractor of the change via written notice signed by an authorized representative of DHS. The notice shall identify the services affected, the new rate for each service, and the effective date of the change. **A notice issued pursuant to this paragraph shall constitute an amendment to the Contract without the Contractor's signature.**

- c. **Financial Reporting Requirements:** If federal, State or DHS financial reporting requirements change, DHS may advise the Contractor of the changes via written notice signed by an authorized representative of DHS. The notice shall specifically identify the new reporting requirement(s) and the effective date of the change. **A notice issued pursuant to this paragraph shall constitute an amendment to the Contract without the Contractor's signature.**

4. **REMEDIES:** If DHS determines that the Contractor or a subcontractor has failed to comply with any of the provisions of this Contract, DHS may do any of the following:

- a. **Disallow Contractor Expenditures.** DHS may disallow the Contractor's and the subcontractor's expenditures and adjust its payments to the Contractor by deducting such disallowed expenditures.
- b. **Withhold Payment.** DHS may withhold funds from the Contractor for contract non-compliance, misuse of public funds, or failure to comply with State and federal law.
 - (1) If an audit finding or judicial determination is made that the Contractor or its subcontractor misused public funds, DHS may also withhold funds otherwise allocated to the Contractor to cover the costs of any audits, attorneys' fees and other expenses. DHS shall give the Contractor prior written notice that the payment(s) will be withheld. The notice shall specify the reasons for such withholding. DHS shall inform the Contractor whether any amounts withheld may be released, and if so, the actions that the Contractor must take to bring about the release of any amounts withheld.
 - (2) If an independent CPA audit or DHS review determines that the payments made by DHS to the Contractor were incorrectly paid or were based on incorrect information from the Contractor, DHS may adjust or withhold the Contractor's payments for the remainder of the contract period or until DHS fully recoups the funds.
- c. **Require Repayment.** Upon written request by DHS, any overpayments, disallowed expenditures, excess payments or questioned costs are immediately due and payable by the Contractor. In the alternative DHS shall have the right to withhold any or all subsequent payments pursuant to this Contract until DHS fully recoups these funds. In such cases, the Contractor shall not reduce the level of services required by the Contract.
- d. **Require Corrective Action.** The Contractor shall comply with the terms of any corrective action plan required by DHS.

- e. **Client Placements.** DHS may remove clients from, suspend client placements with, and/or suspend client referrals to, the Contractor, if DHS determines the Contractor is not complying with the terms of this Contract. DHS/_____ will provide written notice to the Contractor prior to implementing a suspension. The notice will advise the Contractor of any actions required of it to lift the suspension.
- f. **Terminate the Contract.** DHS may terminate this Contract in accordance with the contract termination provisions outlined below.
- g. **Pursue Any Legal Remedy.** DHS and the Contractor may avail themselves of all remedies allowed by state or federal law.

5. **CONTRACT DISPUTES - ADMINISTRATIVE REVIEW:** Prior to pursuing other legal remedies, the Contractor shall appeal any contract dispute with DHS by filing a written appeal with the DHS Deputy Director for Support Services within 30 days of the disputed DHS action or decision. The Contractor's written appeal shall identify the Contractor, the contract number, the disputed issue, pertinent contract provisions or legal authorities, and the contact person for the Contractor. The Contractor shall also provide a copy of its appeal to the Director of DHS/_____.

The DHS Deputy Director shall have 60 days to issue DHS' written response to the Contractor's appeal. The Deputy Director may designate another DHS employee to review and respond to the Contractor's appeal.

6. **CONTRACT TERMINATION:**

- a. **Right to Terminate.** Either party may terminate this Contract, in whole or in part, at any time, with or without cause, in advance of the Contract's expiration date by:
 - (1) Giving the other party 30 days written notice, or
 - (2) Mutual agreement in writing.
- b. **Immediate Termination.** If the Contractor's violation of this Contract creates or is likely to create a risk of harm to the clients served pursuant to this Contract, or if any other provision of this Contract allows DHS to terminate the Contract immediately for a violation of that provision, DHS may terminate this Contract immediately by notifying the Contractor in writing.
- c. **Cooperative Efforts to Protect the Clients.** If either party elects to terminate this Contract, both parties shall use their best efforts to provide for uninterrupted client services.
- d. **Payments after Termination.** Upon termination of this Contract, the parties shall use the financial and accounting arrangements in this Contract to process payments for any undisputed services that the Contractor rendered before termination. The Contractor shall have no claim for services not rendered. DHS shall not pay Contractor for any of

the Contractor's obligations or expenses that extend beyond the termination date. **This provision shall survive the termination of this Contract.**

- e. **Records Retention and Access after Termination.** The Contractor shall comply with the provisions of this Contract relating to the Contractor's record-keeping responsibilities and DHS access to records and shall ensure that the Contractor's staff properly maintains all records. **This provision shall survive the termination of this Contract.**

- 7. **ATTORNEYS' FEES AND COSTS:** If either party seeks to enforce this Contract upon a breach by the other party, or if one party seeks to defend itself against liability arising from the negligence of the other party, the prevailing party shall receive from the unsuccessful party all court costs and its reasonable attorneys' fees.
- 8. **GRIEVANCE PROCEDURES FOR CLIENTS AND APPLICANTS:** The Contractor shall establish a grievance system for the clients and applicants of the programs covered by this Contract, and shall notify each client and applicant in writing that:
 - a. Clients and applicants have the right to present the Contractor with their grievances including but not limited to:
 - (1) denial of services covered by this Contract;
 - (2) exclusion from a program covered by this Contract; or
 - (3) inadequacies or inequities in the programs and services provided pursuant to this Contract; and
 - b. The Contractor shall establish and maintain a tracking system identifying the nature and outcome of each grievance.
 - c. If the Contractor denies a grievance, or fails to respond to a grievance in a timely fashion, the client or applicant may contact the DHS/_____ Director in writing. The DHS/_____ Director or designee will attempt to resolve the grievance.

PART II: SCOPE OF WORK AND SPECIAL CONDITIONS

DESCRIPTION OF THE SERVICES OR SUPPORTS TO BE PROVIDED PURSUANT TO THIS CONTRACT.

In completing this part of the Contract, state in detail the resources the Contractor must have and what the Contractor must do (performance criteria) to successfully provide or complete the services or supports required by this Contract. When the Contract is the result of a procurement, the performance criteria identified must be consistent with the criteria in the Procurement and/or any amendments to the Procurement and in most cases BCM will have the approved language on file. When applicable, the performance criteria must also be consistent with the criteria used by DHS in setting the rate of payment for the type(s) of service to be provided by the Contractor. The description of the performance criteria the Contractor must meet must be detailed enough to allow DHS/_____ or DHS to effectively monitor the Contractor's performance.

*Is this service or support a **Residential Program**?*

Select ONE of the following:

Yes?

If yes is marked above, the Description of the Services or Supports must state whether or not the Contractor may receive payment for client absences. If the Contractor may receive payment for client absences, the conditions under which such payments will be made must be clearly outlined (e.g. required documentation, limit on number of absences, written approvals).

No?

*(For more detailed instructions on how to complete this part of the contract, please refer to the **BCM Monitoring Handbook for Performance Based Contracts.**)*

(Specify Service location below and delete these instructions)

Service delivery area or address/location where the services will be provided:

PART III: PERFORMANCE MEASURES AND CLIENT OUTCOMES

The Contractor shall comply with the following objective based performance requirements:

1. **Performance Based Outcome Measures:** The Contractor shall cooperate and collaborate with DHS to assess and determine how closely its program(s) meets known principles of effective interventions based on empirically derived principles.
2. **Client Centered Objectives.** If a program or service covered by this Contract requires the development of client treatment plans, the treatment plans must include individualized treatment objectives that address the assessed needs of the client. The treatment plans must prescribe an integrated program of therapies, activities, and experiences to meet the client's treatment objectives and include reasonable measures to evaluate and ensure the Contractor meets the client's treatment objectives.
3. **Internal Quality Management.** The Contractor is responsible to develop, implement, and maintain an internal quality management system that shall evaluate the Contractor's programs as required in Part II of this Contract, and establish a system of self-correcting feedback that may be externally validated by DHS/_____.

(ONLY DCFS or DJJS Service Contracts use the 2nd paragraph # 4. Select the correct # 4 below and delete the other paragraph # 4 and these instructions.)

4. **Customer or Client Satisfaction Surveys:** The Contractor understands that DHS is committed to providing client-oriented services, and that DHS and DHS/_____ often conduct client-satisfaction surveys to ensure that services are appropriate for the clients served. The Contractor and/or its subcontractor therefore agree to cooperate with all DHS and DHS/_____-initiated client or customer feedback activities.
4. **Performance Based Outcome Measures:** The Contractor shall cooperate and collaborate with DHS, DHS/_____ and the University of Utah and its staff (when referred to the Contractor by DHS/_____) to assess and determine:
 - a. How closely its program(s) meet known principles of effective interventions using evidence-based practices;
 - b. The effectiveness of the Contractor's program(s) in improving outcomes for DHS Clients; and/or
 - c. The degree to which the Contractor is using evidenced-based practices.

If through this process the Contractor's program is found to be lacking in any of the above areas, DHS/_____ and/or the University of Utah may, at DHS/_____'s sole discretion, provide the Contractor with free technical assistance to improve its program's effectiveness

PART IV: PAYMENT TERMS AND BILLING INFORMATION

SECTION A: PAYMENT

Payments made to the Contractor pursuant to the terms of this Contract shall be the Contractor's total compensation for Contract services provided. With the exception of guaranteed payment amounts and cost reimbursement contracts, payments to the Contractor shall be made pursuant to this Contract only if clients are placed with, are referred to, or select the Contractor for services pursuant to this Contract AND only if the Contractor actually provides contract services to the clients.

SECTION B: PAYMENT RATES

The Contractor shall be paid for services provided pursuant to this Contract based on the rates in the following table:

Payment Rate Table

Service Title	Service Code	Unit of Service	Rate	No. of Service Units	Total Contract Amount

SECTION C: BILLING REQUIREMENTS

- BILLING FOR CONTRACT SERVICES:** To obtain payment from DHS for the services provided pursuant to this Contract, the Contractor shall submit to DHS/_____ the billing form specified below for its authorized services:

(Insert ONE of the following options and delete both the checkbox and the other options)

- Unit of Service (Rate-Based) Contracts:** Contractor shall use the DHS 520 Billing Form, or other billing form provided by DHS/_____, *(except when billing for services provided to DHS/DCFS non-custody clients, which shall be billed on the Cost of Service Billing Form)*. The Contractor shall bill DHS/_____ only for actual units of service delivered, and shall maintain records that adequately support the delivery of such services.

- Cost Reimbursement Contracts:** Contractor shall use the Cost of Service Billing Form. Contractor shall use the funds paid pursuant to this Contract only for the purposes specified in this Contract. Contractor shall apply the federal, State, and DHS cost principles referred to in Part V The Contractor shall bill DHS/_____ only for actual costs allowable under federal and/or State and DHS cost principles and shall maintain records that adequately support that the service costs billed by the Contractor were necessary, reasonable, allowable, properly allocated, and actually incurred.

In instances where it is difficult to establish rates due to a lack of cost data, DHS, at its discretion, may adjust the negotiated cost reimbursement rates up or down during the contract term in accordance with prior paid actual costs or a review of current costs verified by audit or fiscal review. DHS may make such a rate adjustment retroactive to the beginning of the contract. Cost reimbursement rates for contracts awarded as a result of a competitive procurement process may not be adjusted or changed during the term of the Contract, except in accordance with the terms of the procurement.

- Both Unit of Service and Cost Reimbursement Contracts:**

- (1) Contractor shall use the DHS 520 Billing Form, or other billing form provided by DHS/_____, to bill for the following services which shall be reimbursed on a unit of service basis:

(Work with BCM to develop appropriate language specifying what portion of the contract is unit of service)

The Contractor shall bill DHS/_____ only for actual units of service delivered, and shall maintain records that adequately support the delivery of such services.

- (2) Contractor shall use the Cost of Service Billing Form to bill for the following services which shall be reimbursed on a cost reimbursement basis:

(Work with BCM to develop appropriate language specifying what portion of the contract is cost reimbursement.)

Contractor shall apply the federal, State, and DHS cost principles referred to in Part V. The Contractor shall bill DHS/_____ only for actual costs allowable under federal, State and DHS cost principles and shall maintain records that adequately support the service costs billed by the Contractor were necessary, reasonable, allowable, properly allocated, and actually incurred.

In instances where it is difficult to establish rates due to a lack of cost data, DHS, at its discretion, may adjust the negotiated cost reimbursement rates up or down during the contract term in

accordance with prior paid actual costs or a review of current costs verified by audit or fiscal review. DHS may make such a rate adjustment retroactive to the beginning of the contract. Cost reimbursement rates for contracts awarded as a result of a competitive procurement process may not be adjusted or changed during the term of the Contract, except in accordance with the terms of the procurement.

Guaranteed Minimum Contracts: Payment to the Contractor is for maintaining the facilities and programs required by this Contract, and DHS shall pay the guaranteed minimum amount regardless of:

- (1) the number of clients DHS places with the Contractor, provided the Contractor accepts the clients DHS refers to the Contractor (up to the maximum number of clients, if any, specified in this Contract) and provides the services required by this Contract to the clients placed with the Contractor; OR,
- (2) the number of clients actually served by the Contractor pursuant to this Contract, provided the Contractor actually provides the services required by this Contract.

Are there conditions under which the Contractor may receive payments in addition to the guaranteed minimum?

No. *(If “No” is selected delete the checkbox and the remaining language in this part)*

Yes. *(If “Yes” is selected state below: 1) the conditions under which the additional payments will be made; and 2) how the amount of the additional payments will be calculated. Then delete the “No” option, the checkboxes and these instructions.)*

The conditions under which the Contractor may receive payments in addition to the guaranteed minimum and the method for calculating the amount of any additional payments owed are outlined below:

(Work with BCM to determine which, if any, of the following billing language should be included in the Contract to cover any additional payments allowed.)

Rate-Based.

Contractor shall use the DHS 520 Billing Form, or other billing form provided by DHS/_____, to bill for any authorized rate- based services provided. The Contractor shall bill DHS/_____ only for actual units of

service delivered and shall maintain records that adequately support the delivery of such services.

Cost Reimbursement. *(Will require a budget if contract does not already have one)*

Contractor shall use the Cost of Service Billing Form to bill for any authorized cost reimbursement services provided. Contractor shall use the funds paid pursuant to this Contract only for the purposes specified in this Contract. Contractor shall apply the federal, State, and DHS cost principles referred to in Part V The Contractor shall bill DHS/_____ only for actual costs allowable under federal and/or State and DHS cost principles and shall maintain records that adequately support that the service costs billed by the Contractor were necessary, reasonable, allowable, properly allocated, and actually incurred.

In instances where it is difficult to establish rates due to a lack of cost data, DHS, at its discretion, may adjust the negotiated cost reimbursement rates up or down during the contract term in accordance with prior paid actual costs or a review of current costs verified by audit or fiscal review. DHS may make such a rate adjustment retroactive to the beginning of the contract. Cost reimbursement rates for contracts awarded as a result of a competitive procurement process may not be adjusted or changed during the term of the Contract, except in accordance with the terms of the procurement.

2. **PAYMENT OPTIONS FOR RESIDENTIAL CARE SERVICES:**

- a. **Client Absences:** If Part II of this Contract states that the Contractor may receive payment for client absences from a residential placement the Contractor shall include appropriate information in the client's records (such as the reason for the client's absence and the client's whereabouts during the absence). In addition, if Part II of this Contract requires the Contractor to obtain written approval from DHS/_____ in order to obtain payment for a client's absence, the Contractor shall include a copy of such approval in the client's file.

Payment for client absences from a residential placement is prohibited in the following situations: (1) The client has left the Contractor's residential program and there is no plan to return the client to the Contractor's residential program and, therefore, no need to hold the slot; or (2) the standard rate already includes a factor for absences.

(Select ONE of the billing options below and delete the check boxes, remaining options and these instructions.)

- b. **Billing for First and Last Days:** DHS/_____ will reimburse the Contractor for both the first and last days of service for clients in residential care. The level of compensation for the first and last days of service is specified in the Payment Rate Table above.

- b. **Billing for First and Last Days:** DHS/_____ will **NOT** reimburse the Contractor for both the first and last days of service for clients in residential care.
- b. **Billing for First and Last Days:** Billing for first and last days is not applicable to this Contract.
- 3. **BILLING PERIODS AND DEADLINES:** DHS may delay or deny payment to the Contractor for billings or claims for services that do not meet the billing deadlines outlined below.
 - a. **Contractor Billing Period:** The Contractor's billing period is

(Select one, and remove the checkbox, the other options and these instructions.)
 Monthly Quarterly Other (Specify):
 - b. **Ongoing Billings:** The Contractor shall submit all billings and claims for services rendered during a given billing period within twenty (20) days after the last date of that billing period, **EXCEPT** that the Contractor shall submit all billings for services performed on or before June 30th of a given fiscal year pursuant to paragraph c. below.
 - c. **State Fiscal Year-End Billings:** The State Fiscal Year is from July 1st through June 30th. The Contractor shall submit all billings for services performed on or before June 30th of a given fiscal year **no later than July 14th** of the following fiscal year, regardless of the Contractor's billing period or the expiration or termination date of this Contract.
 - d. **Final Contract Billings:** The Contractor shall submit all final billings under this Contract within 14 days of expiration or termination of the Contract, regardless of the Contractor's billing period.

SECTION D: ADDITIONAL REQUIREMENTS

- 1. **UNIFORM BILLING PRACTICES:** The Contractor guarantees that the amounts it charges for services to Clients pursuant to this Contract shall not be higher than the amounts the Contractor charges others for comparable services.
- 2. **NO IMPOSITION OF FEES:** The Contractor shall not charge clients for any services provided pursuant to this Contract, except as expressly authorized in Part II of this Contract.
- 3. **SUPPORTING DOCUMENTATION:** The Contractor shall maintain the documentation necessary to support the services and/or costs billed by the Contractor and shall submit such documentation with the billings if requested. The Contractor shall store and file required documentation in a systematic and consistent manner.

4. **QUESTIONED COSTS:** DHS may consider any billing by the Contractor to be a questioned cost if the billing is not supported by proper documentation verifying that the amounts billed for services provided or costs incurred pursuant to this Contract were actually provided or incurred in accordance with Contract provisions.
5. **THIRD-PARTY RESOURCES:** In addition to funds received from DHS, various other sources of funding, including Medicaid and private insurance, may be available to the Contractor for services delivered pursuant to this Contract. Income from other state, federal and county programs may also be available. All sources of funding other than funding received from DHS are referred to below as "third-party resources."

a. **Principles and Requirements:** Where third-party resources are available, the parties are bound by the following principles and requirements:

- (1) The Contractor shall not obtain duplicate recovery from DHS and third-party resources for services delivered pursuant to this Contract.
- (2) Except as specified in subsection b. below ("Exceptions to the Foregoing Principles and Requirements"), the Contractor shall seek payment from third-party resources for services delivered pursuant to this Contract.
- (3) Upon successful recovery of funds from third-party resources, Contractor shall reimburse DHS for the full amount of the recovery.
- (4) If the amount of the recovery is greater than the amount that the Contractor received from DHS for the service(s) covered by the recovery, the Contractor is required to reimburse DHS only for the actual amount that the Contractor received from DHS for the service(s) covered by the recovery.

b. **Exceptions to the Foregoing Principles and Requirements:**

- (1) *Medicaid Enhancement; Home and Community-Based Services.* If the Contractor has opted to have DHS/_____ bill Medicaid on its behalf, the Contractor shall not seek reimbursement from Medicaid if the client is eligible for Medicaid Enhancement or for Home and Community-Based Services. Instead, DHS/_____ will pay Contractor for services delivered, and DHS/_____ will bill the third-party resources directly, and the DHS Office of Recovery Services or Medicaid will then pursue reimbursement for amounts that DHS/_____ paid to Contractor for such services.
- (2) *No "Incentive Amount" for Cost Reimbursement Contracts.* No Incentive Amount is envisioned for cost reimbursement contracts. In such cost reimbursement contracts, the Contractor may bill DHS/_____ for the cost of collecting from third-party resources only if the Contractor provides DHS/_____ with adequate documentation to show that the costs were necessary, reasonable and actually incurred by the Contractor. The

Contractor shall maintain financial records to support such costs for auditing purposes.

6. **REDUCTION AND UNDERUTILIZATION OF FUNDS:**

- a. If the State becomes subject to a legislative change, revocation of statutory authority, lack of appropriated funds or unavailability of funds, which would render the Contractor’s delivery or performance under this Contract impossible, or unnecessary, DHS may terminate this Contract in whole or in part. If the legislature does not appropriate funds for paying the State’s obligations on this Contract, or if funding to the State is reduced due to an order by the Governor, or is required by State law, or if Federal funding (when applicable) is not provided, or requires any return or “giveback” of funds required for the State to continue payments or if the Executive Branch mandates any cuts or holdbacks in spending, or if the Executive Director of DHS decides to reduce the payments pursuant to this Contract, DHS may terminate this Contract or proportionately reduce the services required by this Contract and the amounts to be paid by DHS to the Contractor for such services.
- b. If DHS determines that the Contractor is significantly underutilizing funds, DHS may, at its option, reduce the amount of funding under this Contract. DHS shall give the Contractor notice of any such reduction. Notwithstanding the foregoing, DHS shall reimburse the Contractor in accordance with the original provisions of this Contract for all services performed before the effective date of the reduction.

SECTION E: CONTRACTOR MATCH REQUIREMENTS

1. **MATCHING FUNDS:**

(Check the applicable options below and delete the non-applicable options, and these instructions.)

- Matching funds are not applicable to this Contract.
- The Contractor shall provide the following "match":
 - In-kind services valued at \$_____. Is this match a non-federal match?
 Yes No
 - Cash in the amount of \$_____. Is this match a non-federal match?
 Yes No

- 2. **NON-FEDERAL MATCH:** If this Contract requires a non-federal match, the match shall comply with the provisions of Title 45 of the Code of Federal Regulations, Part 74. Other funding sources may require different non-federal match amounts, as shown above.

PART V: ACCOUNTING REQUIREMENTS AND FINANCIAL COMPLIANCE

SECTION A: COST PRINCIPLES

1. **APPLICABLE COST PRINCIPLES:** Regardless of the Contractor's entity type or the source of its funding, the Contractor shall comply with and determine allowable costs in accordance with the federal cost accounting principles described in 2 CFR Part 200 *et seq.* as well as any other applicable Parts.
2. **DHS GENERAL COST PRINCIPLES:** In addition to the federal cost principles, the Contractor shall comply with the following DHS general cost principles which apply to all types of DHS contracts.
 - a. **Related Party Costs:** The Contractor shall not make payments to related parties (as defined in the Conflict of Interest provisions of this Contract) in any category of expenditure (Administrative Costs, Capital Expenditures, or Program Costs) without the prior written consent of DHS. Payments to related parties may include, but are not limited to: salaries, wages, compensation under employment or service agreements, or payments under purchase, lease or rental agreements. Payments made by the Contractor to related parties without prior written consent may be disallowed and require repayment to DHS.
 - b. **Personal Expenses:** DHS will not reimburse Contractors for personal expenses. Travel that is not business related is an example of a personal expense that is not allowable.
 - c. **Rate Based Contracts:** If this Contract is a DHS set rate based contract, the Contractor may be required to submit actual cost information to DHS for DHS' use in setting rates. In submitting actual cost information, the DHS cost principles for cost reimbursement contracts also apply.
3. **DHS COST PRINCIPLES FOR COST REIMBURSEMENT CONTRACTS:** If this Contract is a cost reimbursement contract the Contractor shall also comply with the following additional DHS cost principles.
 - a. **Differentiation of Costs:** The contractor must differentiate administrative costs from program costs. Administrative costs are costs that do not directly relate to a specific program such as legal counsel, accounting, budgeting, planning, risk management, and management information systems. Program costs are costs that directly relate to a program activity such as client care and supervision, residential services, and client educational services provided by the contractor.

Personnel who have both administrative and program duties or who have duties related to multiple programs shall allocate their time to each function and program as appropriate and shall maintain time sheets or other comparable supporting documentation detailing the time spent in each function and program. Costs that

support more than one function or program, such as office supplies; telephone; facility (including depreciation and interest); data processing equipment and support; transportation; fringe benefits etc., shall also be appropriately allocated to the applicable function and program.

- b. **Administrative Costs:** The administrative costs of this Contract shall not exceed 25% of the program costs of this Contract in any given Contractor fiscal year.

SECTION B: CONTRACTOR'S COST ACCOUNTING SYSTEM

1. At a minimum, the Contractor's accounting system shall provide for a General Ledger and cost accounting records adequate to assure that costs incurred pursuant to this Contract are reasonable, allowable, and allocable to Contract objectives, and separate from costs associated with other business activities of the Contractor. The Contractor's accounting system shall also provide for the timely development of all necessary cost data in the form required by the Contract.
2. If the Contractor must meet federal, State, or DHS reporting requirements, the Contractor's accounting system shall be capable of producing the information and documentation necessary to comply with those reporting requirements.

SECTION C: QUESTIONED COSTS

For purposes of this Contract, "Questioned Costs" means costs that are questioned because of monitoring or audit findings, including but not limited to findings:

1. Which result from a violation or possible violation of a provision of law, statute, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of State or federal funds, including the terms and conditions of a federal award as well as funds used to match federal funds;
2. Where the costs, at the time of the audit, are not supported by adequate documentation; or
3. Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.

SECTION D: BUDGET REQUIREMENTS

1. **ADJUSTMENTS TO CONTRACTOR'S BUDGET:** If this Contract requires a budget from the Contractor, the budget(s) attached to this Contract shall be the basis for DHS's payments to the Contractor. The Contractor shall not transfer budgeted funds from "Program Costs" (Category III in the DHS Budget form) to either "Administrative Costs" (Category I in the DHS Budget form) or "Capital Expenditures" (Category II in the DHS Budget form) without prior written approval by the DHS/_____ Financial Manager. Nor shall the Contractor transfer budgeted funds between Administrative Costs and Capital Expenditures without prior written approval by the DHS/_____ Financial Manager. The Contractor may, however, transfer funds from Administrative Costs or Capital

Expenditures to Program Costs without prior approval. The Contractor may also transfer funds between subcategories within each major category without prior approval so long as there are no restrictions on expenditures within those subcategories.

2. **EXPENDITURES IN EXCESS OF THOSE BUDGETED:** If this Contract requires a budget, DHS may consider any amounts in excess of the total amount budgeted in either Administrative Costs or Capital Expenditures to be questioned costs that will normally require the Contractor to refund such excesses to DHS. Amounts in excess of the total amount budgeted in Program Costs will not normally result in questioned costs unless DHS has placed restrictions on subcategories within this major category. When this Contract restricts expenditures within defined subcategories, DHS will consider any unapproved excesses to be a questioned cost.

SECTION E: FINANCIAL REPORTING REQUIREMENTS

1. **DEFINITIONS:** The following definitions are provided for the Contractor's convenience and so that the Contractor may comply with its federal, State, and DHS financial reporting requirements:
 - a. **"CFR"** means the Code of Federal Regulations
 - b. **"Federal Audit Clearinghouse"** is as defined in 2 CFR § 200.36.
 - c. **"Federal Awards"** is as defined in 2 CFR § 200.38.
 - d. **"Financial Reports"** means audits, reviews, compilations, statements of functional expenses, balance sheets, income statements, statements of cash flow, or the preparer's notes to the financial reports, etc.
 - e. **"GAAP"** means Generally Accepted Accounting Principles, a combination of authoritative accounting principles, standards and procedures (set by policy boards).
 - f. **"GAAS"** means Generally Accepted Auditing Standards, issued by the American Institute of Certified Public Accountants (AICPA).
 - g. **"GAS/GAGAS"** means Government Auditing Standards, issued by the Comptroller General of the United States (also known as "Yellow Book" standards). GAS is often referred to as Generally Accepted Government Auditing Standards ("GAGAS"). GAGAS incorporates the generally accepted standards issued by the AICPA.
 - h. **"OMB"** means the federal Executive Office of the President, Office of Management and Budget.
 - i. **"Pass-Through Entity"** is as defined in 2 CFR § 200.74.
 - j. **"Subrecipient"** is as defined in 2 CFR § 200.93.

- k. **"Uniform Guidance"** means the "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards" in 2 CFR Part 200 *et seq.*
2. **TYPE OF FINANCIAL REPORT REQUIRED.** Whether or not the Contractor is required to obtain and submit an annual audit or other type of financial report is determined by the Contractor's entity type and the amount and source of its funds, revenues and/or expenditures during the Contractor's fiscal year.
3. **TYPE OF CONTRACTOR.** If this Contract is funded in whole or in part with federal funds the Contractor may have federal reporting requirements if the Contractor meets the definition of a subrecipient. The Contractor:

(Check ONE and delete the check box, the non-applicable option and these instructions.)

- Is **not** a Subrecipient under this Contract.
- Is a Subrecipient under this Contract.

4. **COMPLIANCE WITH APPLICABLE FEDERAL AND STATE REPORTING REQUIREMENTS.** The Contractor shall comply with all applicable federal and State laws, rules, and requirements regarding financial reporting as set forth in the:
- a. Uniform Guidance, and
- b. Utah Code § 51-2a-101 *et. seq.*

A summary of Federal and State reporting requirements is provided in Table 1 below.

5. **COMPLIANCE WITH REPORTING REQUIREMENTS TO DHS.**
- a. The Contractor shall comply with all applicable financial reporting requirements to DHS as set forth in Table 2 below.
- b. **Extensions:** If the Contractor needs an extension to submit required reports to DHS, the Contractor shall submit a written request to the Bureau of Contract Management (BCM) Rate Manager at the following email:

dhsfinancialreports@utah.gov

Requests for extensions shall include the following information:

- (1) The length of time for which the extension is requested;
- (2) The Contractor's justification for the requested extension; and
- (3) The name, phone number, and email address of the person requesting the extension.

Extensions shall be granted at the sole discretion of the BCM Rate Manager.

Table 1: Summary of Federal and State Annual Financial Reporting Requirements

Federal Reporting Requirements <i>Per 2 CFR Part 200 (OMB Uniform Guidance)</i>	Utah State Reporting Requirements <i>Per Utah Code § 51-2a-201</i>	Utah State Reporting Requirements <i>Per Utah Code § 51-2a-201.5</i>
<p align="center"><u>TYPE OF ENTITY</u></p> <p align="center">Non-Federal Entities</p>	<p align="center"><u>TYPE OF ENTITY</u></p> <p align="center">Government Entities, School Districts, and Charter Schools</p>	<p align="center"><u>TYPE OF ENTITY</u></p> <p align="center">Non-Profit Corporations with Revenues or Expenditures of MORE than \$25,000 in Federal Pass Through, State, or Local Funds as Defined in § 51-2a-201.5</p>
<p align="center"><u>TYPE OF FINANCIAL REPORT REQUIRED</u></p> <p>1. If \$750,000 or more in federal awards is expended, a <i>Single or Program Specific Audit</i> using GAGAS standards and prepared in accordance with the requirements of OMB Uniform Guidance is required, including:</p> <p>a. The <u>data collection form</u> described in § 200.512.</p> <p>b. The <u>Reporting Package</u> described in § 200.512 including:</p> <p>(1) <u>Financial statements</u> and schedule of expenditures of federal awards;</p> <p>(2) A <u>summary schedule of prior audit findings</u>;</p> <p>(3) The <u>auditor's report(s)</u>; and</p> <p>(4) A <u>corrective action plan</u> for any current year audit findings.</p> <p>c. Any <u>Management Letter(s)</u> issued by the auditor.</p>	<p align="center"><u>TYPE OF FINANCIAL REPORT REQUIRED</u></p> <p>The reporting requirements for entities in this category may be found on the Utah State Auditor's website at:</p> <p align="center">auditor.utah.gov</p> <p>Reporting requirements depend on the entity's total annual revenues or expenditures which are tiered as follows:</p> <p>1. Revenues or expenditures greater than \$750,000.</p> <p>2. Revenues or expenditures between \$350,000 and \$750,000.</p>	<p align="center"><u>TYPE OF FINANCIAL REPORT REQUIRED</u></p> <p>The reporting requirements for entities in this category may be found on the Utah State Auditor's website at:</p> <p align="center">auditor.utah.gov</p> <p>Reporting requirements depend on the entity's total annual revenues or expenditures which are tiered as follows:</p> <p>1. Revenues or expenditures are \$750,000 or more.</p> <p>2. Revenues or expenditures are less than \$750,000 but at least \$350,000.</p> <p>3. Revenues or expenditures are less than \$350,000 but at least \$100,000.</p>
<p>2. If less than \$750,000 in federal awards is expended, no audit is required, <i>except as noted in § 200.503</i>, but records must be available for review or audit.</p>	<p>3. Revenues or expenditures less than \$350,000.</p>	<p>4. Revenues or expenditures are less than \$100,000 but greater than \$25,000.</p>
<p align="center"><u>SUBMISSION REQUIREMENTS</u></p> <p>Reports shall be submitted to the Federal Audit Clearinghouse within 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, whichever is earlier.</p>	<p align="center"><u>SUBMISSION REQUIREMENTS</u></p> <p>Government Entities: Reports shall be submitted to the State Auditor within 180 days after the Contractor's fiscal year end.</p> <p>School Districts and Charter Schools: Reports shall be submitted to the Office of Education by November 30th and to the State Auditor by December 31st.</p>	<p align="center"><u>SUBMISSION REQUIREMENTS</u></p> <p>Reports shall be submitted to the State Auditor within six months after the Contractor's fiscal year end.</p>
<p>Disclaimer: The information provided in this Table is summary information only. Any discrepancies between the requirements in this Table and the requirements in federal or state law or rule shall be resolved in favor of the requirements in the applicable law or rule. The Contractor is advised to review the applicable law and rules or seek professional advice to determine whether it is subject to federal and/or Utah State financial reporting requirements and if so, the type of report(s) required for compliance.</p>		

Table 2: Annual Financial Reporting Requirements to DHS

TYPE OF ENTITY				
Entities with Federal Reporting Requirements Pursuant to the OMB Uniform Guidance	Government Entities with Utah State Reporting Requirements Pursuant to Utah Code § 51-2a-201	Nonprofit Corporations Subject to Utah Code § 51-2a-201.5	All Entities Receiving Pass Through Money as Defined in Utah Code § 63J-1-220	All Entities that DO NOT have Federal or State Reporting Requirements Pursuant to Table 1
No additional requirements for DHS	No additional requirements for DHS.	Annually Disclose to DHS: 1. Whether the nonprofit met or exceeded the dollar amounts listed in § 51-2a-201.5(2) in the previous fiscal year of the nonprofit; and 2. Whether the nonprofit anticipates meeting or exceeding the dollar amounts listed in § 51-2a-201.5(2) in the fiscal year the money is disbursed.	Annually Provide to DHS: 1. A written description and an itemized report detailing the expenditure of the state money, or the intended expenditure of any state money that has not been spent; and 2. A final written itemized report when all the state money is spent.	If \$750,000 or MORE is received from DHS in the Contractor's fiscal year: A CPA Audit performed in accordance with GAGAS is required, including The auditor's Management Letter, if the audit report disclosed any audit findings.
				If LESS THAN \$750,000 but at least \$500,000 OR MORE is received from DHS during the Contractor's fiscal year: A CPA Review is required.
				If LESS THAN \$500,000 but at least \$250,000 OR MORE is received from DHS during the Contractor's fiscal year: A CPA Compilation is required.
				If LESS THAN \$250,000 is received from DHS during the Contractor's fiscal year: No report to DHS is required.
SUBMISSION REQUIREMENTS				
See Table 1	See Table 1	Disclosure shall be made to the DHS Contract Analyst at the time of entering into this Contract and to the DHS Rate Manager annually thereafter within six (6) months after the end of Contractor's fiscal year	Reports shall be submitted to the DHS Contract Representative for this Contract no later than July 31st each year or within 30 days of the expenditure of all State funds, whichever is earlier	Reports shall be submitted within six (6) months after the end of Contractor's fiscal year to: dhsfinancialreports@utah.gov OR Department of Human Services Bureau of Contract Management Attention: Rate Manager 195 N. 1950 W., 4 th Floor Salt Lake City, UT 84116

PART VI: COMMONLY APPLICABLE LAWS

SECTION A: COMPLIANCE WITH ADMINISTRATIVE GRANTS

The Contractor is bound by federal law, which establishes fiscal and administrative rules applicable to entities that receive federal grants. These rules are published in OMB Circular A-110 and in the OMB Common Rule, which is codified in 45 C.F.R. Part 92 (1999) and 45 C.F.R. Part 74.

SECTION B: COMPLIANCE WITH STATE AND FEDERAL LAWS

The Contractor is required to comply with all anti-discrimination and drug-free workplace laws, and all laws governing research involving human subjects. When the Contractor receives state or federal funds pursuant to this Contract, certain state and federal requirements may also apply. The Contractor shall comply with these laws and regulations to the extent they apply to the subject matter of this Contract and are required by the amount of state and federal funds involved in this Contract.

Table 1, “Federal and State Laws,” is provided as a reference guide to various laws and requirements. The information contained in this table is not exhaustive and the Contractor understands that it is obligated to seek independent legal advice in these matters.

Table 1: Federal and State Laws

Description of Act	Applicable Federal Law	Applicable State Law
Discrimination and Employment Related Laws		
Age Discrimination Act of 1975	42 U.S.C. §§ 6101-6107; 45 C.F.R. Part 91	
Americans with Disabilities Act	42 U.S.C. § 12101 <i>et seq.</i> ; 28 C.F.R. Part 35, Part 39	
Civil Rights Act of 1964 as amended, Title VI	45 C.F.R. Part 80 42 U.S.C. § 2000d <i>et seq.</i>	
Civil Rights Act of 1964, Title VII	42 U.S.C. § 2000e <i>et seq.</i>	Utah Code § 13-7-1 <i>et seq.</i>
Contract Work Hours and Safety Standards Act	40 U.S.C. §§ 3701-3704; 29 C.F.R. Part 5	
Copeland Anti-Kickback Act	45C.F.R. 2543.82, 18 U.S.C. § 874, 29 C.F.R. Part 3	
Davis-Bacon Act	40 U.S.C. § 3142; 29 C.F.R. Part 5	
Drug-Free Workplace Requirements	41 U.S.C. § 701 through 707, Drug Free Workplace Act of 1988	Utah Code § 34-41-101 <i>et seq.</i> ; Utah Code § 34-38-1 <i>et seq.</i> ; Utah Code § 67-19-36 <i>et seq.</i> ; Utah Administrative Code, R477-14-1 <i>et seq.</i>
Education Amendments of 1972, Title IX	20 U.S.C. § 1681 <i>et seq.</i> ; 45 C.F.R. Part 86	
Employment Eligibility Verification	8 U.S.C. § 1324a	Utah Code § 63G-12-302
Equal Employment Opportunity	Exec. Order No. 11246 (1965), as amended by Exec. Order No. 11375; 41 C.F.R. Part 60	

Description of Act	Applicable Federal Law	Applicable State Law
Equal Pay Act	29 U.S.C. § 206(d)	
Fair Labor Standards Act	29 U.S.C. § 201 <i>et seq.</i>	
Immigration Control and Reform Act	8 U.S.C. § 1324	
Protection and Advocacy for Individuals with Mental Illness Act	42 U.S.C. § 10801 <i>et seq.</i>	
Public Health Service Act, Section 522 and Section 526	45 C.F.R. Part 84.53	
Rehabilitation Act of 1973, as amended, Section 504	29 U.S.C. § 794; 45 C.F.R. Part 84	
Utah Antidiscrimination Act -- (Includes the prohibition of unlawful harassment)		Utah Code § 34A-5-101, <i>et seq.</i> (See also Utah Executive Order March 17, 1993, which prohibits sexual harassment of state employees and employees of public and higher education)
Utah Occupational Safety and Health Act		Utah Code § 34A-6-101, <i>et seq.</i>
Property Laws		
Energy Policy and Conservation Act	42 U.S.C. § 6322	
Federal Clean Air Act	42 U.S.C. § 7401 <i>et seq.</i>	Utah Code § 26-38-1, <i>et seq.</i>
Federal Water Pollution Control Act	33 U.S.C. § 1251 <i>et seq.</i>	
Flood Disaster Act of 1973 and other flood hazard provisions	42 U.S.C. § 4106	
National Environmental Policy Act of 1969 ("NEPA")	42 U.S.C. § 4321 <i>et seq.</i> ; 40 C.F.R. Part 1500 <i>et seq.</i>	
National Historic Preservation Act ("NHPA") of 1966	16 U.S.C. § 470, <i>et seq.</i> ; 36 C.F.R. Part 800, <i>et seq.</i>	
Pro-Children Act of 1994	20 U.S.C. § 6081, <i>et seq.</i>	
Medicaid and Utah False Claims Reporting Laws		
Civil False Claims Act	31 U.S.C. § 3729-3733 and Chapter 38	
Deficit Reduction Act of 2005	Public L. 109-171 (2006)	
Utah False Claims Act		Utah Code § 26-20-1 <i>et seq.</i>
Utah Protection of Public Employees Act		Utah Code § 67-21-1 <i>et seq.</i>
Procurement Laws		
Utah Procurement Code		Utah Code § 63G-6a-101 <i>et seq.</i>
Utah State Procurement Rules		Utah Administrative Code, Rule R33-1, <i>et seq.</i>
Debarment and Suspension	45 C.F.R. Part 76; Exec. Order No. 12549; and Exec. Order 12689	Utah Code § 63G-6a-904
Miscellaneous Laws		
Abuse Reporting Requirements		Utah Code § 62A-4a-403; Utah Code § 62A-3-305
Byrd Anti-Lobbying Amendment	31 U.S.C. § 1352; 45 C.F.R. Part 93	

Description of Act	Applicable Federal Law	Applicable State Law
Ethics Acts		Utah Code § 67-16-1 <i>et. seq.</i> and § 10-3-1301 <i>et. seq.</i>
Federal Funding and Accountability and Transparency Act (FFATA)	P.L. 109-282, as amended by Section 6202 of P.L. 110-252. Guidance issued by the Office of Management and Budget may be found in the Federal Register (Volume 75, No. 177, September 14, 2010, 2 CFR Part 170) that establishes reporting requirements.	
Government Records Access and Management Act (GRAMA),		Utah Code § 63G-2-101 <i>et. seq.</i>
Hatch Act	5 U.S.C. § 1501, <i>et. seq.</i>	Utah Code § 67-19-19
Health Insurance Portability and Accountability Act of 1996 (HIPAA)	45 C.F.R. Parts 160, 162, and 164	
Public Health Service Act, Section 474(a), Protection of Human Subjects	42 U.S.C. § 2899; 45 C.F.R. Part 46; 21 C.F.R. 50 & 21 C.F.R. 56	
Substance Abuse and Mental Health confidentiality of substance abuse and mental health records	42. U.S.C. § 290dd-2; 42 C.F.R. § 2 and 2a	
Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Government	45 C.F.R. § 92	
Utah Human Services Code		Utah Code Title 62A
Utah Referral Information Network		Utah Code § 62A-17-101 <i>et. seq.</i>

PART VII: JURISDICTION, COPYRIGHT, AND OTHER GENERAL PROVISIONS

1. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** The provisions of this Contract shall be governed and interpreted according to the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of this Contract or the breach thereof. Venue shall be in Salt Lake City, in the Third District Court for Salt Lake County.
2. **SEVERABILITY CLAUSE:** A final determination that any provision of this Contract is illegal or void shall not affect the legality or enforceability of any other provision of this Contract.
3. **COPYRIGHT:** Except as otherwise expressly provided in this Contract, DHS owns the copyright for all materials developed by the Contractor for DHS. If the Contractor develops any materials for its own use in connection with this Contract, and if such materials are not required by this Contract or requested by DHS as part of the Contractor's performance, the Contractor may use those materials free of charge, and without obtaining prior permission.

The Contractor shall release, indemnify and hold the State, its officers, agents and employees harmless from liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted program, composition, secret process, patented or un-patented program, invention, article or appliance furnished or used in the performance of this Contract.

The Contractor is not entitled to use human subjects information generated in connection with this Contract for any purpose, including scholarly publications or research purposes, unless the Contractor obtained written approval of its research protocol from the DHS IRB prior to the commencement of any research efforts.

4. **ABILITY TO COMPLY WITH CONTRACT REQUIREMENTS:** The Contractor represents that it has the financial, managerial and institutional capacity to fully comply with the requirements of this Contract.

- 5. **AUTHORITY OF PERSON SIGNING FOR THE CONTRACTOR:** The Contractor represents that the person who has signed this Contract on behalf of the Contractor has full legal authority to bind the Contractor and to execute this Contract.
- 6. **CONTRACTOR HAS NOT ALTERED THIS CONTRACT:** By signing this Contract, the Contractor represents that neither it nor its employees or representatives have in any way altered the language or provisions in the Contract, and that this Contract contains exactly the same provisions that appeared in this document and its exhibits when DHS/_____ originally sent it to the Contractor.

IN WITNESS WHEREOF, the parties executed this Contract:

CONTRACTOR

DHS/ _____

By: _____
 Type or Print Name: _____
 Title/Position: _____

By: _____
 Type or Print Name: _____
 Title/Position: _____

Date: _____

Date: _____

RECEIVED AND PROCESSED

APPROVED AS TO PROCUREMENT

By: _____
 Sheri Witucki, Contract Analyst
 State Division of Finance

By: _____
 Kent D. Beers, Director
 State Division of Purchasing and General Services

Date: _____

Date: _____

By: _____
 DHS Purchasing Agent
 DHS Bureau of Contract Management

Date: _____

Log No. _____

Contract No. _____

DHS Procurement No. _____