

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 the Division of Services for People with Disabilities (DHS/DSPD) (referred to in this Contract as "DHS" or "DHS/DSPD");

AND

*(Insert Contractor's name, then legal status and "referred to in this Contract as the "Contractor")."
 Address, city, state*

- | | | |
|---|--|--|
| <input type="checkbox"/> Sole Proprietor | <input type="checkbox"/> Professional Corporation (P.C.) | <input type="checkbox"/> Joint Venture |
| <input type="checkbox"/> For-Profit Corporation | <input type="checkbox"/> Non-Profit Corporation | <input type="checkbox"/> Partnership |
| <input type="checkbox"/> Charitable Foundation | Limited Liability Company (LLC): | <input type="checkbox"/> Other Type: _____ |
| | <input type="checkbox"/> LLC/Sole Proprietor, | |
| | or | |
| | <input type="checkbox"/> LLC/Partnership | |

NOTICES AND DOCUMENTS SHALL BE SUBMITTED TO:

	CONTRACTOR	DHS
Name		
Title		
Telephone		
Email		
Address		

TABLE OF PROVISIONS IN THIS CONTRACT

- PART I: GENERAL PROVISIONS**
- PART II: SCOPE OF WORK AND SPECIAL CONDITIONS**
- PART III: PERFORMANCE MEASURES AND CLIENT OUTCOMES**
- PART IV: CONTRACT COSTS, BILLING AND PAYMENT INFORMATION**
- PART V: COST ACCOUNTING PRINCIPLES AND FINANCIAL REPORTING REQUIREMENTS**
- PART VI: BUDGETING PRINCIPLES AND FORMS**
- PART VII: COMMONLY APPLICABLE LAWS**
- PART VIII: DISCLOSURE OF LOBBYING ACTIVITIES**
- PART IX: JURISDICTION, COPYRIGHT AND OTHER GENERAL PROVISIONS**

ATTACHMENT ___: Self-Insurance Approval *(statement from the DHS Deputy Director)*

OTHER ATTACHMENTS: *(Requires prior approval from BCM)*

PART I: GENERAL PROVISIONS

SECTION A: CONTRACT DESCRIPTION AND SPECIFICATIONS

1. **PURPOSE AND SCOPE OF CONTRACT:** *Briefly describe the services Contractor will provide pursuant to this Contract. (Example: "Contractor will provide residential treatment services for 16 clients of the DHS/DSPD.")*

Part II ("Scope of Work and Special Conditions") and Part III ("Performance Measures and Client Outcomes") of this Contract describe in more detail the services and activities the Contractor shall provide pursuant to this Contract. The Contractor shall use the funds paid by DHS/DSPD pursuant to this Contract only for the purposes specified in this "Purpose and Scope" section and in Parts II and III. The Contractor represents that it has the financial, managerial and institutional capacity to fully comply with the requirements of this Contract.

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

- 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 only be renewed in accordance with the terms of the Procurement under which the Contract was issued, which states:

Insert the exact language of the Procurement's renewal provision here:

OR

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

Insert renewal language here for contracts not entered into pursuant to a procurement:

3. **AUTHORITY AND PROCUREMENT:**

- a. The authority for entering into this Contract is set forth in the Utah Procurement Code (Utah Code § 63G-6-101 *et. seq.*), the Utah Procurement Rules (Utah Administrative Code Title R33), and other related statutes authorizing purchases on behalf of the State.

b. *(Check one of the following five options)*

- This Contract is entered into pursuant to procurement # _____.
- This Contract is entered into pursuant to procurement # _____, under which DHS/DSPD contracts with all qualified entities.
- This Contract is entered into pursuant to sole source authorization # _____ from the DHS Bureau of Contract Management.
- This Contract was awarded without bids due to an emergency.
- This Contract is with a governmental entity and is exempt from procurement.

4. **TYPE OF CONTRACTOR:** The Contractor is a *(check ONE)*:

- "Service Provider."** A service provider is a private or governmental entity that receives funds from DHS/DSPD for services provided to clients of DHS/DS[D under a program developed by DHS/DSPD.
- "Subrecipient."** A subrecipient is a non-federal governmental entity or a non-profit or for-profit organization that develops and operates its own program of services for eligible clients, and that receives federal and/or State funds from DHS/DSPD or another entity which serves as a "recipient" and "pass-through entity" for such funding. **(State Funded Contracts.** If this Contract is funded solely by *State* funds, but the Contractor operates its own program of services for eligible clients, the Contractor shall comply with the financial record-keeping and reporting requirements that apply to federally-funded subrecipients.)

5. **TYPE OF CONTRACT:**

a. **Method Used to Calculate Contractor's Compensation.** This Contract is a:

(Check ONE of these two options):

- "Unit of Service" (Rate-Based) Contract.** DHS/DSPD's payment to the Contractor is based on individual units of service provided by the Contractor, payable at the allowable rate established by DHS. If and when DHS/DSPD refers clients to the Contractor for services, DHS/DSPD shall pay the Contractor no more than the rates specified in Part IV ("Contract Costs, Billing and Payment Information") for the Contractor's services pursuant to this Contract. If DHS/DSPD and the Contractor have negotiated a rate that is lower than the standard rates set by DHS, DHS/DSPD shall pay the Contractor at that lower, negotiated rate. *(This type of contract may provide for either a "Fixed Amount" or a "Non-Fixed Amount" type of contract payment.)*
- "Cost Reimbursement" Contract.** DHS/DSPD's payment to the Contractor is based on supporting documentation from the Contractor showing that the service

costs were necessary, reasonable and actually incurred by the Contractor in providing the services required by this Contract. Unless expressly stated otherwise in this Contract, the Contractor shall bill DHS/DSPD only for actual costs allowable under federal and DHS cost principles, and shall maintain records that adequately support such costs. *(This type of contract must always provide for a "Fixed Amount" type of contract payment.)*

- b. **DHS/DSPD's Discretion about Client Placements.** DHS/DSPD gives the Contractor no express or implied guarantee or representation that it will place any clients or maintain any client placements with the Contractor.
- c. **Billing Procedures and Cost Principles.** See Part IV ("Contract Costs, Billing and Payment Information") for additional provisions about billings and Part V ("Cost Accounting Principles and Financial Reporting Requirements") for applicable cost principles.

6. **TYPE OF CONTRACT PAYMENTS:**

Basis for Contractor's Compensation. DHS/DSPD shall compensate the Contractor as follows:

(Check ONE of these two options):

Does this Contract have a maximum amount?

If no, check this box

Non-Fixed Amount ("Open-Ended"): This is a "requirements" contract in that DHS has not set a limit or cap for the total payment the Contractor may receive for providing services pursuant to this Contract. (Contractor's compensation must comply with the standard rates established by DHS or any lower negotiated rates the parties have agreed upon.)

If yes, check this box

Fixed Amount ("Closed-Ended" or "Defined Total"): DHS/DSPD defines or limits the total dollar amount that DHS/DSPD shall pay the Contractor for providing services pursuant to this Contract. The Contractor shall ensure that its costs and billings do not exceed the Fixed Amount for this Contract. See Part VI ("Budgeting Principles and Forms") for additional budgeting provisions.

This Fixed Amount (Closed Ended/Defined Total) Type of Contract Payment requires the Contractor to provide the following level of services in order to qualify for payment pursuant to this Contract:

(Check ONE of these three options):

"Actual Services/Approved Budget": DHS/DSPD shall pay the Contractor not more than \$ _____ *(insert the Fixed Amount)* for providing the services pursuant to this Contract, but DHS/DSPD shall make such payments only if DHS/DSPD places clients with the

Contractor and only if the Contractor actually provides the services to the clients. Payments are based on the Contractor's approved budget and documented actual costs. This is a "cost-reimbursement" contract. *(When this box is checked, the "Cost Reimbursement" box in Part IV, Paragraph #2 must also be checked.)*

"Actual Services/Rate Based": DHS/DSPD shall pay the Contractor not more than \$_____ *(insert the Fixed Amount)* for providing services pursuant to this Contract, but DHS/DSPD shall make such payments only if DHS/DSPD places clients with the Contractor and only if the Contractor actually provides the services to the clients. Payments are based on DHS "Unit of Service" rates listed in Part IV of this Contract ("Contract Costs, Billing and Payment Information.") *(When this box is checked the "Unit of Service" box in Part IV, Paragraph #2 must also be checked.)*

"Guaranteed Minimum": DHS/DSPD shall pay the Contractor \$_____ *(insert the Fixed Amount)* for maintaining the facilities and programs required by this Contract, and DHS/DSPD shall pay this Fixed Amount regardless of the number of clients DHS/DSPD actually places with the Contractor, provided that the Contractor shall accept the clients that DHS/DSPD refers to the Contractor, up to the maximum number of clients, if any, specified in this Contract.

Are there conditions under which the guaranteed minimum will be increased by additional payments?

- No
- Yes

If yes, indicate whether the additional payments are:

- rate-based (Actual Services/Rate Based)
- budget-based (Actual Services/Approved Budget)

7. **REDUCTION OF FUNDS IN CONTRACTS WITH A FIXED AMOUNT TYPE OF CONTRACT PAYMENT**: If an order by the Legislature or the Governor, or a federal or State law reduces the amount of funding to DHS/DSPD, or if the Executive Director of DHS decides to reduce the payments under this Contract, DHS/DSPD may terminate this Contract or proportionately reduce the services required by this Contract and the amounts to be paid by DHS/DSPD to the Contractor for such services. In addition, if the Contractor defaults in any manner in the performance of any obligation pursuant to this Contract, or if DHS/DSPD determines that the Contractor is significantly underutilizing funds, DHS/DSPD may, at its option, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or underutilization of funds. DHS/DSPD shall give the Contractor 30 days notice of any such reduction or termination. Notwithstanding the foregoing, DHS/DSPD shall reimburse the Contractor in accordance with the original provisions of this Contract for all services performed before the effective date of the reduction or termination.

If the type of Contract payment is a Fixed Amount, and if DHS/DSPD reduces the payments under this Contract, the Contractor may make a proportionate reduction in the amount of

services performed or in the number of clients served pursuant to this Contract. The Contractor shall notify DHS/DSPD in writing no less than ten working days before it implements any such reductions in services or client numbers.

8. **NO IMPOSITION OF FEES:** The Contractor shall not charge clients for any services provided pursuant to this Contract, except as expressly authorized in writing by DHS/DSPD.
9. **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 DHS Procurement identified above as well as all terms and requirements of that Procurement.
 - d. The Contractor's Response to the DHS Procurement identified above as well as all documents attached to the Contractor's Response.
10. **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 identified above as well as all terms and requirements of the Procurement.
 - c. The Attachments to this Contract.
 - d. The Contractor's Response to the DHS Procurement identified above as well as all documents attached to the Contractor's Response.

SECTION B: CONTRACTOR'S LEGAL STATUS AND INDEMNIFICATION 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 this Contract. The compensation paid to the Contractor

pursuant to this Contract shall be the Contractor's total compensation from DHS for the services provided pursuant to this Contract. The Contractor is responsible for the payment of any and all tax liabilities incurred as a result of the compensation received.

2. **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, DHS/DSPD and their officers, and employees as additional insureds. The additional insured endorsement shall provide the State of Utah, DHS, DHS/DSPD 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 \$2,000,000 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.

If the Contractor does not provide services in its own office or facility, the requirement for general liability insurance is waived.

- (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 \$2,000,000 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/DSPD 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 (“the Act”), 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 Act. 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 Act 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/DSPD certificates of insurance and "additional insured" endorsements that indicate that the required coverage is in effect and that the insurer shall give DHS/DSPD 30 days notice of any modification, cancellation or non-renewal of the policy. On an annual basis and upon request from DHS/DSPD, a non-governmental contractor shall provide DHS/DSPD 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.

3. **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/DSPD 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/DSPD within 15 days of the time the modifications are made.

SECTION C: CONTRACTOR'S COMPLIANCE WITH APPLICABLE LAWS

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.** Pursuant to 45 C.F.R. 76.100 *et seq.* and Executive Orders 12549 and 12689, DHS may not award contracts to entities that are listed on the government-wide debarment and suspension system. 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 must attach a written explanation and DHS/DSPD must obtain *prior* written approval for this Contract from the DHS Deputy Director for Support Services. Failure to obtain such prior written approval shall be considered a material breach of this Contract.
3. **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.

4. **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. 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 if the Act is applicable to this Contract
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. **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.
7. **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 applicable standards, requirements and ordinances during the term of this Contract, and if the Contractor fails to do so, DHS/DSPD may terminate this Contract immediately.
8. **COMPLIANCE WITH DHS' PROVIDER CODE OF CONDUCT:** The Contractor shall follow and enforce the DHS 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/DSPD 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://www.hsofo.utah.gov/services_contract_info.htm .)

- 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.

9. **RESTRICTIONS ON CONFLICTS OF INTEREST:**

- a. **Purpose.** The purpose of this Section is to assure that the goods and services provided to DHS/DSPD pursuant to this Contract afford DHS/DSPD a commercially reasonable level of quality and cost. These provisions prohibit Contractors and anyone acting on their behalf from using their employment with the State of Utah or their relationship with others, including potential subcontractors, to enter into any transaction or arrangement that is improper or gives the appearance of being improper because of that person's State employment or relationship with a third party.
- b. **Definitions**
 - (1) **"Business Entity"** includes a sole proprietorship, partnership, limited liability company (LLC), association, joint venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on a business.
 - (2) **"Conflict of Interest"** means any situation where the Contractor or any Representative of the Contractor has economic, social, political, familial, or other interests which interfere with, or have the potential to interfere with, the exercise of that person's duties, responsibilities, or judgment on behalf of the Contractor or DHS/DSPD, or which involve conflicting loyalties to the Contractor and to another interest. "Conflict of Interest" also includes any violation of the Ethics Acts, as explained in this Paragraph 9.d. below.
 - (3) **"Contractor"** means the entity contracting with DHS/DSPD and includes all Representatives of that entity. If the Contractor subcontracts any of its duties pursuant to this Contract, the term "Contractor" also refers to the subcontractor and its Representatives.
 - (4) **"Contractor's Representative"** means any person or entity acting on behalf of the Contractor, and includes all employees, owners, partners, directors, officers, board members, and agents of the Contractor, as well as any other individual or group of 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, or unless they have direct, unsupervised contact with DHS/DSPD clients.
 - (5) **"Disclosure Statement"** means a written statement provided by the Contractor to DHS/DSPD about the Contractor's Conflicts of Interest. A form entitled "Conflict of Interest – Disclosure Statement" is available from DHS/DSPD, and

may be obtained through a DHS/DSPD Contract Representative or through the DHS Bureau of Contract Management web site:

http://www.hsofo.utah.gov/services_contract_forms.htm

- (6) **“Related Party”** means:
- (a) any person related to the Contractor by blood or marriage, which, for purposes of this Contract, includes parents, spouses, children, siblings, grandparents, grandchildren, uncles, aunts, nephews, nieces, first cousins, and in-laws; and
 - (b) all business associates of the Contractor who:
 - (i) are partners, directors, or officers in the same business entity as the Contractor;
 - (ii) have authority to make decisions or establish policies in the same business entity as the Contractor; or
 - (iii) directly or indirectly own 10% or more in the same business entity as the Contractor.
- (7) **“Related-Party Transaction”** means payments made by the Contractor to a Related Party in any manner or description (including those relating to administrative costs, capital expenditures, program expenditures, and payments for goods, services, facilities, leases, salaries, wages, professional fees or similar expenses) in connection with this Contract. “Related-Party Transaction” also means arrangements made between the Contractor and a Related Party, whether or not payments are involved, which affect the performance of this Contract in any manner.
- (8) **“Volunteer”** means a person who donates services to the Contractor without pay or other compensation, except for expenses incurred (such as meals and other travel costs).

c. **Restrictions on Conflicts of Interest.** Transactions involving Conflicts of Interest are prohibited to the extent that they are in any way the result of undue influence. Conflicts of Interest can occur in one of three ways:

- (1) **Dual Employment.** Conflicts of Interest involving Dual Employment can occur when a Contractor’s Representative is also employed by the State of Utah. Any use of a person’s employment with the State of Utah to influence DHS/DSPD’s decision to enter into this Contract with the Contractor or to influence any transactions undertaken by the Contractor pursuant to this Contract with DHS/DSPD is a prohibited Conflict of Interest.
- (2) **Related-Party Transactions.** Conflicts of Interest involving Related-Party Transactions occur when the Contractor makes payments to a Related Party in

any manner or description using money obtained from DHS/DSPD through this Contract. Conflicts of Interest can also occur when arrangements are made between the Contractor and a Related Party, whether or not payments are involved, which affect the performance of this Contract in any manner. Any use of a person's status as a Related Party to influence DHS/DSPD's decision to enter into this Contract with the Contractor or to influence any transactions undertaken by the Contractor pursuant to this Contract with DHS/DSPD is a prohibited Conflict of Interest.

- (3) **Independent Judgment Impaired.** Conflicts of Interest involving impaired judgment occur when the Contractor's Representative participates in any transaction on the Contractor's behalf and has a relationship or shared interest with another party to the transaction, and this relationship or shared interest is not covered by the Related-Party Transaction restrictions but could affect the Representative's ability or willingness to exercise independent judgment for the benefit of the Contractor. Any use of a person's relationship or shared interest to influence DHS/DSPD's decision to enter into this Contract with the Contractor or to influence any transactions undertaken by the Contractor pursuant to this Contract with DHS/DSPD is a prohibited Conflict of Interest.

- d. **Dual Employment and Contractor's Compliance with the Ethics Acts.** While dual employment is not prohibited, the Contractor shall take measures to ensure that the Contractor's Representatives do not use their dual employment to unduly influence either DHS/DSPD's decision to enter into this Contract or any transactions undertaken by the Contractor in furtherance of this Contract.

The Contractor shall comply at all times with the applicable provisions of the Utah Public Officers' and Employees' Ethics Act (Title 67, Chapter 16 of the Utah Code) and the Municipal Officers' and Employees' Ethics Act (Title 10, Chapter 3, Part 13 of the Utah Code) (referred to collectively as the "Ethics Acts.") The Ethics Acts prohibit public officers and public employees from having personal involvement in any Business Entity if that involvement creates a substantial conflict between their private interests and their public duties. The parties agree, however, that except as otherwise expressly provided in the "Related-Party Transaction" and "Independent Judgment Impaired" provisions of this Contract, nothing in this Contract is intended to expand or modify the Contractor's obligations under the Ethics Acts.

- e. **Restrictions on Conflicts of Interest Involving Related-Party Transactions or Where Independent Judgment Is Impaired.** Prior written approval from DHS/DSPD is required before the Contractor enters into any Related-Party Transaction in connection with this Contract. Prior written approval from DHS/DSPD is also required before the Contractor enters into any transaction if a Contractor's Representative has any relationship with another party to the transaction which has the potential to impair the Contractor's Representative's independent judgment. Any transactions involving related-parties, or involving any other relationship that could impair the independent judgment of the Contractor, and which have the potential to result in increased costs, decreased performance, the appearance of impropriety, or any other disadvantage to DHS/DSPD, are prohibited.

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

(1) **Self-Disclosure and Contractor Review.** The Contractor shall familiarize Contractor's Representatives with:

- (a) the Conflict of Interest concept and the disclosure requirements of this Contract; and
- (b) the applicable provisions of the Ethics Acts.

The Contractor shall implement a written policy that requires the Contractor's Representatives to disclose to the Contractor all existing, potential, and contemplated Conflicts of Interest. The Contractor shall also regularly review any disclosures and its own operations to reasonably assure DHS/DSPD that the Contractor avoids prohibited Conflicts of Interest.

(2) **Contractor's Disclosure Statement.** Before signing this Contract, the Contractor shall submit a Disclosure Statement to DHS/DSPD in which the Contractor discloses any existing or potential Conflicts of Interest, including all information required by the Ethics Acts and this Contract. In particular, the Contractor's Disclosure Statement shall include:

- (a) **For Conflicts of Interest involving Dual Employment** the following information is required:
 - (i) whether any of the Contractor's Representatives are employed both by the Contractor and by the State of Utah;
 - (ii) the name of the Contractor's Representative having that Dual Employment;
 - (iii) the title or position of the Contractor's Representative with the Contractor and with the State of Utah;
 - (iv) the nature and value of the Contractor's Representative's interest in the Contractor's Business Entity;
 - (v) the Contractor's Representative's decision-making authority with the Contractor and with the State of Utah and how that individual's authority affects this Contract; and
 - (vi) measures taken by the Contractor to protect DHS/DSPD from potentially adverse effects resulting from the Contractor's Representative's Dual Employment.
- (b) **For Conflicts of Interest involving Related-Party Transactions or involving impaired judgment** the following information is required:
 - (i) the name of the Contractor's 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) a description of the transaction to which the Conflict of Interest applies and the dollar amount involved (if any);
- (v) the decision-making authority of the Contractor's Representative and the party identified in (ii) above, with respect to the applicable transaction;
- (vi) the potential effect of the Conflict of Interest on this Contract; and
- (vii) the measures taken by the Contractor to protect DHS/DSPD from potentially adverse effects resulting from the identified parties' relationship.

If the Contractor has no Conflicts of Interest or has no Representatives who are also employees of the State of Utah, the Contractor shall so indicate on the Disclosure Statement. By submitting a Disclosure Statement, the Contractor is certifying to DHS/DSPD that it has implemented the safeguards required by Paragraph 9.f.(1) above, and that it has checked its organization and the Contractor's Representatives for Conflicts of Interest.

- (3) **Contractor's Continuing Duty to Disclose Conflicts of Interest.** The Contractor has a continuing duty to immediately send DHS/DSPD an updated Disclosure Statement if, at any time during the term of the Contract, the Contractor contemplates any transaction involving a Conflict of Interest, or hires or affiliates with any individual with a potential Conflict of Interest, or discovers any existing Conflict of Interest. Additionally, for contracts in excess of one year, the Contractor shall submit to DHS/DSPD an updated Disclosure Statement by July 1 of each year, containing the same information required in the initial Disclosure Statement.
- (4) **Disclosure for Political Subdivisions and Agencies.** If the Contractor is a political subdivision, agency or municipality of the State of Utah, the Contractor may submit to DHS/DSPD, a written certification in lieu of the Disclosure Statement, in which the Contractor certifies that it maintains a written policy requiring the Contractor's Representatives to disclose their Conflicts of Interest, and that this policy provides the Contractor with the information it needs to satisfy the provisions of this Contract. The certification shall also provide that the Contractor monitors for compliance with these Conflict of Interest provisions and can reasonably assure DHS/DSPD that any of the Contractor's Representatives with a potential Conflict of Interest do not:
 - (a) make or influence decisions or set policies that affect this Contract;
 - (b) monitor the performance of this Contract; or
 - (c) become involved in or otherwise benefit from the performance of this Contract.

A form entitled "Conflict of Interest Certification" is available from DHS/DSPD, and may be obtained through a DHS/DSPD Contract Representative or through the DHS Bureau of Contract Management web site: http://www.hsofo.utah.gov/services_contract_forms.htm

g. **DHS' Response to Disclosure Statements.**

(1) **Initial Approval, Disapproval or Remedial Action Requirement.**

DHS/DSPD shall submit a written response to the Contractor within fourteen days after receiving the Contractor's Disclosure Statement. The response shall acknowledge receipt of the Disclosure Statement, and shall advise the Contractor that either:

- (a) DHS/DSPD does not require any additional information or remedial action before executing this Contract;
- (b) DHS/DSPD requires additional information or disclosures or requires the Contractor to undertake specific remedial action before executing or continuing this Contract; or
- (c) DHS/DSPD disapproves certain identified transactions due to one or more prohibited Conflicts of Interest and unless the Contractor discontinues those transactions, DHS/DSPD will declare this Contract breached and terminated.

(2) **DHS' Right to Continue Its Investigation and Revise Its Response.** If DHS/DSPD fails to respond to the Contractor within fourteen days of receiving the Contractor's Disclosure Statement, the Contractor may proceed as if no additional information or remedial action were required. The parties expressly agree, however, that regardless of any action taken pursuant to the response provisions above, DHS/DSPD retains the right to do any of the following if, at any time during the term of this Contract, DHS/DSPD determines that a Conflict of Interest problem exists:

- (a) continue to investigate any potential Conflict of Interest;
- (b) require further information from the Contractor;
- (c) require specific remedial action; or
- (d) disapprove identified transactions.

h. **Monitoring the Contractor's Compliance with the Conflict of Interest Provisions of this Contract.** DHS/DSPD reserves the right to investigate and audit the Contractor's records and transactions at any time to determine if the Contractor has complied with the restrictions on Conflicts of Interest, and to determine if the Contractor took appropriate measures to assure that the goods or services provided

pursuant to this Contract afford DHS/DSPD a satisfactory level of quality and cost. Appropriate measures taken by the Contractor to avoid improper Conflicts of Interest might include, for example, competitive bidding for the goods or services purchased by the Contractor, or a requirement that billings include supporting documentation showing that costs were necessary, reasonable and actually incurred.

- i. **Remedies for Contractor's Non-Compliance with the Conflict of Interest Provisions of This Contract.** The parties expressly acknowledge that if DHS/DSPD reasonably determines that the Contractor has failed to comply with the Conflict of Interest provisions of this Contract and has entered into any prohibited transaction or arrangement that is disadvantageous to DHS/DSPD, DHS/DSPD shall have the option to rescind or void this Contract and any related subcontracts without paying for services provided and without returning any consideration received. DHS/DSPD shall also have the option to disallow the Contractor's expenditures and to adjust its payments to the Contractor by deducting such disallowed expenditures or by requiring the Contractor to immediately refund any payments previously made, as provided in SECTION E Paragraph 4, Remedies below. If DHS/DSPD requests a refund from the Contractor, the Contractor shall refund the payment within ten days of receiving notice of such overpayment, and shall pay DHS/DSPD interest at the rate of eight percent (8%) a year, beginning on the 11th day after the Contractor receives such notice.

10. **CERTIFY 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 that are included within a Request for Proposal. It does not apply to Invitation to Bids nor to the Multi-Step Process.

- a. Status Verification System
 - (1) Contractor certifies as to its own entity, under penalty of perjury, that the named Contractor 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) The State will not consider a proposal for award, nor will it make any award, where there has not been compliance with this Section.

- (4) 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.

SECTION D: COMPLIANCE MONITORING AND RECORD KEEPING RESPONSIBILITIES

1. **MONITORING OF CONTRACTOR'S PERFORMANCE:** DHS and DHS/DSPD shall have the right to monitor the Contractor's performance regarding all services purchased pursuant to this Contract. Monitoring of Contractor's performance shall be at the complete discretion of DHS and DHS/DSPD, who will rely on the criteria set forth in this Contract, including the goals, service objectives and methods described in Parts II and III ("Scope of Work and Special Conditions" and "Performance Measures and Client Outcomes") and the Contractor's fiscal operations described in Parts IV through VI ("Contract Costs, Billing and Payment Information," "Cost Accounting Principles and Financial Reporting Requirements," and "Budgeting Principles and Forms"). Performance monitoring may include both announced and unannounced visits.
2. **CONSULTATION/TECHNICAL ASSISTANCE:** Upon request or as otherwise determined by DHS/DSPD to be appropriate, DHS/DSPD may supply the Contractor with consultation and technical assistance to help the Contractor improve its performance pursuant to this Contract. The Contractor acknowledges, however, that DHS/DSPD is not obligated to provide any particular consultation or technical assistance.
3. **TRAINING FOR CONTRACTOR'S STAFF:** Contractor shall conduct all necessary training to ensure that its staff carries out its responsibilities pursuant to this Contract and that the staff is familiar with the requirements imposed by this Contract and applicable laws.
4. **RECORD-KEEPING AND REPORTING REQUIREMENTS:** The Contractor shall comply with all record-keeping and reporting requirements of this Contract, including the requirements set out in the attachments to this Contract. In addition, 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 applications, determination of clients' eligibility (if applicable), the provision of services and administrative costs, and any other records, such as statistical and fiscal records, necessary for complying with the reporting and accountability requirements of this Contract.

5. **RETENTION OF RECORDS RELATED TO THIS CONTRACT:** The Contractor shall retain all records related to this Contract for the following periods of time:
- a. **Administrative Records and Records Relating to Adult Clients:** The Contractor shall retain all administrative records relating to this Contract and all adult client records (including records that support Title XIX reimbursements) for at least six years after DHS/DSPD makes the last payment on this Contract, or six years after the completion of any audits initiated within this six-year period, whichever period is longer.
 - b. **Records Relating to Clients Who Are Minors:** 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 after DHS/DSPD makes the last payment on this Contract, or six years after the completion of any audits initiated within this six-year period, or until the child client reaches the age of 22, whichever period is longest.
 - c. **DHS' Non-Exclusive Ownership to Patient Records:** The Contractor acknowledges that DHS/DSPD has a non-exclusive ownership interest in the records relating to this Contract, and the Contractor shall not destroy or relocate any records relating to this Contract or the services provided pursuant to this Contract for the six-year period defined in subsections (a) and (b) of this Paragraph ("Retention of Records Related to This Contract"), unless the Contractor gives DHS/DSPD 30 days' written notice and obtains DHS/DSPD's prior written consent to the proposed destruction or relocation of the records. (As used in this Paragraph, the term "relocate" means to move the records to a site which is not either the site where the Contractor provides the services pursuant to this Contract or a site operated by the Contractor in the geographic area covered by this Contract. The term "non-exclusive ownership interest in the records" indicates that entities other than DHS/DSPD may also have an ownership interest in the records, especially if those entities provided part of the funding for the programs or services covered by this Contract.)
 - (1) **Permission for Early Destruction of Records:** If the Contractor requests permission for the early destruction or relocation of the records, DHS/DSPD may require the Contractor to deliver the original records to DHS/DSPD or provide DHS/DSPD with photocopies of the records, and the Contractor shall pay for the delivery costs or photocopying.
 - (2) **Alcohol and Drug Abuse Patient Records - Discontinued Operations:** The Contractor is bound by the requirements of 42 C.F.R. Part 2 ("Confidentiality of Alcohol and Drug Abuse Patient Records") if the Contractor provides alcohol or drug abuse diagnosis, treatment or referral services pursuant to this Contract and obtains information for the purpose of providing such services. In addition, if the Contractor 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/DSPD in writing at least 30 days before it discontinues its operations or ceases to provide its services;
- (b) upon request from DHS/DSPD, 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/DSPD; and
- (c) upon obtaining signed consent forms from patients, the Contractor shall deliver the consenting patients' records to DHS/DSPD.

- (3) **Method for Destruction of Client Records:** If the Contractor maintains any client records pursuant to this Contract, and if this Contract or the DHS retention schedule indicates that such client records are to be destroyed after a certain period of time, the Contractor shall shred or burn the records to protect client confidentiality.

6. **PROTECTING THE CONFIDENTIALITY OF CLIENT RECORDS:** If the Contractor maintains any client records in connection with the services provided pursuant to this Contract, the Contractor shall comply with this Paragraph. The Contractor acknowledges that client records are generally considered confidential and that depending upon the content of such records, public access may be restricted under State and federal laws, including the Public Health Service Act (which classifies alcohol abuse, substance abuse and mental health patient records in federally assisted programs as confidential; *See* 42 U.S.C. § 290dd-2, 42 C.F.R. § 2.1 *et seq.*, and other similar provisions), the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (which establishes standards to protect the privacy of health information maintained by health plans, health care clearinghouses and health care providers who transmit health information in electronic form; *See* Public L. 104-191 (1996), and 45 CFR Parts 160, 162, and 164); and the Utah Government Records Access and Management Act ("GRAMA": Title 63, Chapter 2 of the Utah Code). To preserve the integrity and confidentiality of client records, the Contractor shall maintain all client records in locked rooms or cases. Except with the express written consent of the client, the Contractor shall not use any client information for purposes not directly connected with the responsibilities or services pursuant to this Contract, and the Contractor may disclose client information only as provided by this Contract, as authorized by the client in writing, or as required by law. The Contractor's staff shall have access only to those portions of the records directly related to their work assignments.

7. **GENERAL ACCESS TO THE CONTRACTOR'S RECORDS:** The Contractor shall provide DHS/DSPD with ready access to any records produced or received by the Contractor in connection with the services or programs provided pursuant to this Contract, unless such access is expressly prohibited by law. The Contractor acknowledges that some of its records, including this Contract, may be available to the public and to the Contractor's clients pursuant to GRAMA and other State and federal laws, including the federal "Protection and Advocacy for Individuals with Mental Illness Act," 42 U.S.C. §§ 10801 *et seq.* Therefore, upon receiving a request for records or information from any individual or entity other than DHS/DSPD, the Contractor shall immediately notify DHS/DSPD about the request. However, if the Contractor receives a written request from the client or from a person or entity (such as a client's insurance provider) authorized by the client in writing to have access to the client's records, the

Contractor may release the requested records without first notifying DHS/DSPD if such release is consistent with the record classification, governing law and ethical practices. If the Contractor is not a governmental entity or if the Contractor is a governmental entity that lacks expertise in responding to GRAMA requests, the Contractor shall also consult with DHS/DSPD to determine the appropriate response pursuant to this Contract and federal and State laws, including GRAMA. If the requested records come within the scope of GRAMA and if DHS/DSPD so requests, the Contractor shall deliver copies of the requested records to DHS/DSPD, and allow DHS/DSPD to respond directly to the records-request.

8. **AUDITORS' AND MONITORS' ACCESS TO THE CONTRACTOR'S RECORDS:**

Upon request, the Contractor shall allow independent, State and federal auditors or contract reviewers to have access to any records related to this Contract, including all financial records (such as accounting records and supporting documentation) for audit review and inspection. (See, e.g., 42 C.F.R. § 2.53, "Confidentiality of Alcohol and Drug Abuse Patient Records," which allows inspection of records for auditing and contract performance purposes). In addition, the Contractor shall comply with all records-access provisions set forth in Parts IV, V and VII of this Contract ("Contract Costs, Billing and Payment Information," "Cost Accounting Principles and Financial Reporting Requirements," and "Commonly Applicable Laws").

SECTION E: SUBCONTRACTING, ASSIGNMENT, CONTRACT MODIFICATIONS, AND DISPUTE RESOLUTION PROCEDURES

1. **SUBCONTRACTS:**

a. **Definition of "Subcontractor":** As used in this Contract, the term "subcontractor" means an individual or entity that has entered into an agreement with the original Contractor to perform the services or provide the goods for which that original Contractor is responsible under the terms of this Contract. Notwithstanding the foregoing, the term "subcontractor" also refers to individuals or entities that have entered into agreements with any subcontractor if: (1) those individuals or entities have agreed to perform all or most of the subcontractor's duties pursuant to this Contract; or (2) federal law requires this Contract to apply to such individuals or entities.

b. **Is Subcontracting Allowed:**

(Please check ONE of the three options):

- 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/DSPD in writing of plans to enter into any subcontracts and must obtain DHS/DSPD approval prior to entering into any subcontracts.

- The Contractor is a subrecipient as defined in Part I, Section A, Paragraph 3. 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) **Duties of Subcontractors:** Regardless of whether a particular provision in this Contract mentions subcontractors, a subcontractor must comply with all provisions of this Contract, including the State procurement requirements, insurance requirements and the fiscal and program requirements. The Contractor retains full responsibility for contract compliance, whether the services are provided directly or by a subcontractor.
- (2) **Provisions Required in Subcontracts:** If the Contractor enters into any subcontracts with other individuals or entities pursuant to subsection (b) above, and pays those individuals or entities for such goods or services through federal and State funds, the Contractor shall include provisions in its subcontracts regarding the federal and State laws identified in this Contract (Part I, Section C, "Contractor's Compliance with Applicable Laws"; Part IV, "Contract Costs, Billing and Payment Information"; Part V, "Cost Accounting Principles and Financial Reporting Requirements"; and Part VII, "Commonly Applicable Laws"), as well as other laws and contract provisions identified in 45 C.F.R. § 92.36(i), "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local 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/DSPD 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/DSPD 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/DSPD 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/DSPD recommendation and determines in writing that the assignment does not appear to violate procurement rules;

- (5) The DHS/DSPD 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/DSPD 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 attachment.

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.

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 payments, DHS shall advise the Contractor of the change via written notice signed by the DHS/DSPD Director. The notice shall identify the new rate or payment, 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. **Disallowance of 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. **Payment Withholding.** DHS may withhold funds from the Contractor for contract non-compliance, misuse of public funds, or failure to comply with State and federal law or policy. 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.
- c. **Overpayments.** 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.
- d. **Repayments.** 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.
- e. **Corrective Action.** The Contractor shall comply with the terms of any corrective action plan required by DHS.
- f. **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/DSPD.

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.
- g. **Suspend Client Placements.** DHS may suspend client placements with, and/or client referrals to, the Contractor, if DHS determines that the Contractor is not in compliance with the terms of this Contract. DHS/DSPD 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.

- h. **Legal Remedies.** The parties may avail themselves of all remedies allowed by State or federal law.

5. **CONTRACT TERMINATION:**

- a. **Right to Terminate Upon Thirty Days Notice.** Either party may terminate this Contract, with or without cause, in advance of the Contract's expiration date by giving the other party 30 days written notice.
- 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 will 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 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.**

- 6. **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.

- 7. **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 about:
 - (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. If the Contractor denies a grievance request about the services provided pursuant to this Contract or fails to respond to a grievance in a timely fashion, the client or applicant may contact, in writing, DHS/DSPD's Representative listed on the front page of this contract. The Representative will attempt to resolve the grievance. If the client or applicant is dissatisfied with the Representative's response, the client or applicant may file a written appeal to the Director of DHS/DSPD, and the Director shall respond to the appeal in writing within 30 working days. If the applicant or client is dissatisfied with the Director's decision, the client or applicant may request a hearing before the DHS Office of Administrative Hearings ("OAH"). This hearing request must be filed with OAH within ten (10) working days of receiving the DHS/DSPD Director's written decision. If OAH finds that the client or applicant's request is supported by applicable law, OAH may order the Contractor or DHS to remedy the problem addressed in the grievance.

6. **CONTRACT DISPUTES - COMPLAINT AND APPEAL PROCESS:** If the Contractor wishes to challenge any procurement issues related to this Contract, such challenges are governed by the provisions of Utah Code Title 63G, Chapter 06, Utah Procurement Code.

The Contractor may appeal from any *non*-procurement contract disputes with DHS/DSPD by filing a written appeal with the DHS Deputy Director for Support Services within 30 days of the disputed DHS/DSPD 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 the written appeal to the Director of DHS/DSPD.

The DHS Deputy Director shall have ten working 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. If the Contractor is not satisfied with the response of the Deputy Director, the Contractor may pursue those remedies available to it in a court of appropriate jurisdiction, subject to the rules and regulations applicable therein.

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/DSPD 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.**)*

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 whether the client's treatment objectives are met.
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/DSPD.
4. **Customer or Client Satisfaction Surveys:** The Contractor understands that DHS is committed to providing client-oriented services, and that DHS and DHS/DSPD 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/DSPD-initiated client or customer feedback activities.

PART IV: PAYMENT AND BILLING INFORMATION

SECTION A: TYPE AND AMOUNT OF CONTRACT

This Contract is a "**Unit of Service (Rate-Based) / Non-Fixed Amount Contract**". Payment to the Contractor shall be based on individual units of service provided by the Contractor at rates not exceeding those specified in the Rate Table below. DHS has not set a limit on the total amount the Contractor may receive for providing services pursuant to this Contract; however, Contractor's compensation must comply with the rates identified in this Contract.

SECTION B: PAYMENT TERMS

Payment pursuant to this contract shall be made only if DHS places clients with, or if clients select, the Contractor and only if the Contractor actually provides services to the clients.

1. **MEDICAID SERVICES - CONTRACTOR BILLING OPTIONS:** The Contractor shall be paid for Medicaid services in accordance with Medicaid rules and procedures. The Contractor may select one of the following options for payment of the Medicaid services it provides:
 - a. **Contractor Bills DOH/Medicaid Directly:** The Contractor may bill DOH/Medicaid directly for services provided pursuant to this Contract using the DHS rates specified in the Rate Table below. If the Contractor selects this option, DHS shall not pay or reimburse the Contractor for Medicaid services as the Contractor will be paid by DOH/Medicaid.
 - b. **Contractor Submits Bills to DHS/DSPD:** The Contractor may authorize DHS/DSPD to bill DOH/Medicaid on behalf of the Contractor by completing a voluntary reassignment agreement with DHS/DSPD. If the Contractor selects this option, DHS shall reimburse the Contractor for the Medicaid services it provides and the Contractor shall not bill DOH/Medicaid for the same services.

2. **PAYMENT RATES:**
 - a. **Rates.** The rates for this Contract are specified in the following table. Some or all of the rates contained in this Contract may require review and approval by the Utah State Department of Health (DOH). Until such approval is obtained, these rates are subject to change.

Service Title	Service Code	Unit of Service	Rate (\$)	No. of Service Units	Total Contract Amount (\$)

b. **Basis for Rates: Unit of Service (Rate-Based) Contracts.** DHS/DSPD shall pay the Contractor at the rates established by DHS for such services, or at the rate negotiated by the parties, if that rate is lower than the standard rates established by DHS. The DHS Service Rate Manual defines the DHS rates.

3. **METHOD AND SOURCE OF CONTRACTOR PAYMENT:** To obtain payment for the services provided pursuant to this Contract, the Contractor shall submit to DHS/DSPD an itemized billing for its authorized services, together with the supporting information required for the reimbursement forms supplied by DHS/DSPD. DHS/DSPD shall then reimburse the Contractor by a warrant drawn against DHS or the State of Utah.

Billings will be **Unit of Service (Rate-Based) Contracts:** Contractor shall use the DHS 520 Billing Form (except for DHS Division of Child and Family Services’ (DCFS) non-custody clients, who may be billed on Form 1032). The Contractor shall bill DHS/DSPD only for actual units of service delivered, and shall maintain records that adequately support delivery of such services.

4. **UNIFORM BILLING PRACTICES:** 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.

5. **BILLING PERIODS AND DEADLINES:** 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. All final billings under a contract must be received within twenty (20) days of termination of the contract, regardless of the billing period. If the Contractor fails to meet these deadlines, DHS/DSPD may deny payment for such delayed billings or claims for services.

Contractor’s billing period is Monthly.

The State Fiscal Year is from July 1 through June 30. The Contractor shall submit all billings for services performed on or before June 30th of a given fiscal year no later than July 20th of the following fiscal year, regardless of the termination date of the contract. DHS/DSPD may delay or deny payment for services performed in a given fiscal year if it receives the Contractor’s billing for those services later than July 20th of the following fiscal year.

6. **THIRD-PARTY RESOURCES:** In addition to funds received from DHS/DSPD, 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/DSPD 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 double recovery from DHS/DSPD and third-party resources for services delivered pursuant to this Contract.
 - (2) Except as specified in subsection (12)(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/DSPD 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/DSPD for the service(s) covered by the recovery, the Contractor is required to reimburse DHS/DSPD only for the actual amount that the Contractor received from DHS/DSPD for the service(s) covered by the recovery.

- b. **Exceptions to the Foregoing Principles and Requirements:**
 - (1) *Medicaid Enhancement; Home and Community-Based Services.* Contractor shall not seek reimbursement from Medicaid if the client is eligible for Medicaid Enhancement or for Home and Community-Based Services. Instead, DHS/DSPD will pay Contractor for services delivered, and DHS/DSPD will bill the third-party resources directly, and the DHS Office of Recovery Services or Medicaid will then pursue reimbursement for amounts that DHS/DSPD 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/DSPD for the cost of collecting from third-party resources only if the Contractor provides DHS/DSPD 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.

PART V: COST ACCOUNTING PRINCIPLES AND FINANCIAL REPORTING REQUIREMENTS

SECTION A: DEFINITIONS

The following definitions are provided for the convenience of the Contractor and so that the Contractor may comply with the DHS reporting requirements:

1. **"AICPA"** means American Institute of Certified Public Accountants.
2. **"Audit"** means an examination that:
 - a. Analyzes the accounts of all officers of the entity having responsibility for the care, management, collection, or disbursement of moneys belonging to it or appropriated by law or otherwise acquired for its use or benefit;
 - b. Is performed in accordance with generally accepted government auditing standards ("GAGAS"); and
 - c. Conforms to the uniform classification of accounts established or approved by the State Auditor or any other classification of accounts established by any federal governmental agency.
3. **"Audit Report"** includes:
 - a. The financial reports presented in conformity with generally accepted accounting principles ("GAAP");
 - b. The auditor's opinion on the financial reports;
 - c. A statement by the auditor expressing positive assurance of compliance with State fiscal laws identified by the State Auditor;
 - d. A copy of the auditor's letter to management that identifies any material weakness in internal controls discovered by the auditor and other financial issues related to the expenditure of funds received from federal, State, or local governments to be considered by management; and
 - e. Management's response to the specific recommendations.
4. **"Compilation"** means information presented in the form of a financial report prepared in conformity with GAAP (except that a cash basis accounting method is acceptable) that is the representation of management without the accountant undertaking to express any assurances on the financial report.

5. **"Federal Clearinghouse"** means the federal clearinghouse designated in OMB Circular A-133.
6. **"Federal Funds"** is as defined in OMB Circular A-133.
7. **"Financial Reports"** include an audit, a review, a compilation, a statement of functional expenses, a balance sheet, an income statement, a statement of cash flows, or the preparer's notes to the Financial Reports.
8. **"GAAP"** means Generally Accepted Accounting Principles, a combination of authoritative accounting principles, standards and procedures (set by policy boards).
9. **"GAAS"** means Generally Accepted Auditing Standards, issued by the AICPA.
10. **"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.
11. **"Government Funds"** means financial assistance that a contractor receives from a combination of governmental sources, including federal awarding agencies, State appropriations and other local governments. All of the funds paid to the Contractor pursuant to this Contract are considered "Government Funds" for purposes of determining the Contractor's financial reporting requirements.
12. **"Management Letter"** means the auditor's notes and recommendations to the Contractor's management personnel subsequent to a fiscal audit.
13. **"OMB"** means the federal Executive Office of the President, Office of Management and Budget.
14. **"OMB Circular"** means a publication issued by the OMB that sets forth federal cost accounting and auditing requirements.
15. **"Pass-Through Entity"** means an entity that receives federal funds and then passes those funds through to subrecipients.
16. **"Program-Specific Audit"** means an audit of one specific federal program, using GAGAS standards, as described in OMB Circular A-133.200(c) and A-133.235.
17. **"Questioned Costs"** means costs that are questioned by the auditor because of audit findings, including but not limited to findings:
 - a. Which result from a violation or possible violation of a provision of law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the use of State or federal funds, including funds used to match federal funds;

- b. Where the costs, at the time of the audit, are not supported by adequate documentation; or
 - c. Where the costs incurred appear unreasonable and do not reflect the actions a prudent person would take in the circumstances.
18. **"Reporting Package"** means the auditor's package of financial reports as defined in OMB Circular A-133, and includes Financial Reports and Schedule of Expenditures of Government Funds, Summary Schedule of prior audit findings, auditor's report(s), and corrective action plan.
19. **"Review"** means performing inquiry and analytical procedures that provide the accountant with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the financial reports for them to be in conformity with generally accepted accounting principles.
20. **"Single Audit"** means an audit using GAGAS standards, as described in OMB Circular A-133.500, which includes both the Contractor's financial reports and its federal awards.
21. **"Statement of Functional Expenses"** means a breakdown of administrative expenses and expenses attributed to actual program services on a program-by-program basis.
22. **"Subrecipient"** is as defined in OMB Circular A-133.
23. **"SULCAG"** means the State of Utah Legal Compliance Audit Guide issued by the State Auditor's Office.
24. **"Summary Schedule"** means a summary listing of all Audit Findings reported in the prior annual audit, and includes the Summary Schedule reported in the prior annual audit, except Audit Findings listed as corrected.

SECTION B: COST PRINCIPLES AND ACCOUNTING REQUIREMENTS

1. **APPLICABLE COST PRINCIPLES:** The Contractor shall comply with the federal cost accounting principles applicable to the Contractor's type of business organization regardless of the source of contract funding. Federal cost accounting principles determine allowable costs in DHS contracts as described in circulars published by the OMB, including, but not limited to, OMB Circulars A-87 and A-122. 'For-profit' organizations are required to follow the federal cost accounting principles for 'non-profit' organizations. The Contractor shall also comply with established DHS cost accounting principles. A link to the DHS cost accounting principles may be found at:

http://www.hsofo.utah.gov/services_contract_info.htm

2. **CONTRACTOR'S COST ACCOUNTING SYSTEM:** Contractor shall maintain a financial and cost accounting system in accordance with GAAP, issued by the AICPA; or "Governmental GAAP," issued by the United States Governmental Accounting Standards

Board. 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, allocable to Contract objectives, and separate from costs associated with other business activities of the Contractor.

3. **REQUIRED DOCUMENTATION:** The Contractor shall ensure that all program expenditures and revenues are supported by reasonable documentation, including itemized vouchers, invoices, and receipts. The Contractor shall store and file required documentation in a systematic and consistent manner. Contractor shall maintain all such documentation until six years after all audits initiated by federal and State auditors are completed, or for six years from the date of termination of this Contract, whichever is longer.

SECTION C: FINANCIAL REPORTING REQUIREMENTS

1. REPORTING REQUIREMENTS

- a. **Type of Financial Report Required.** Whether or not a Contractor is required to obtain and submit an annual audit or other financial report is determined by the Contractor's entity type and the amount and source of its funds, revenues and/or expenditures during a given year.
- b. **Compliance with Applicable Federal and State Requirements.** The Contractor shall comply with all applicable federal and State laws and requirements regarding financial reporting set forth in:
 - (1) OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations", published by the federal government;
 - (2) Utah Code § 51-2a-101 *et. seq.*; and
 - (3) The SULCAG issued by the State Auditor's Office.

A summary of these reporting requirements is provided in Table 1 below.

- c. **Compliance with Applicable DHS Financial Reporting Requirements:** The Contractor shall comply with all applicable DHS financial reporting requirements of this Contract as set forth in Table 2 below.
2. **SUBMISSION OF REQUIRED FINANCIAL REPORTS:**

- a. **Filing Deadlines:** Where the Contractor is required to submit federal and State financial reports, the Contractor shall be bound by the submission deadlines stated in OMB Circular A-133 and Utah Code § 51-2a-101 *et. seq.*

Where the Contractor is required to submit financial reports to DHS pursuant to this Contract, the Contractor shall be bound by the applicable submission deadline stated in Table 2 below.

- b. Extensions: If the Contractor needs an extension to file any federal reports, the Contractor must contact the Federal Clearinghouse or federal awarding agencies. If the Contractor needs an extension to file any State reports, the Contractor must contact the State Auditor's Office.

If the Contractor needs an extension to file any report with DHS, the Contractor may request an extension by contacting the BCM Financial Analyst at the address identified in the paragraph below.

- c. Addresses: The Contractor shall submit all required federal and State financial reports to the entities identified in the applicable law. Where the Contractor is required to submit financial reports to DHS, the Contractor shall send the required reports to the address below:

**Department of Human Services
Bureau of Contract Management
Attention: Financial Analyst
195 North 1950 West
Salt Lake City, UT 84116**

Table 1: Federal and State Annual Financial Reporting Requirements

FEDERAL REPORTING REQUIREMENTS (OMB Circular A-133)		UTAH STATE REPORTING REQUIREMENTS (Utah Code § 51-2a-101 et. seq.)	
<u>TYPE OF ENTITY</u> Governmental Entity OR Non-Profit Subrecipient	<u>SUBMISSION DEADLINE</u>	<u>TYPE OF ENTITY</u> Governmental Entity OR Non-Profit Organization that Receives 50% OR MORE of Its Funding from Government Funds ¹	<u>SUBMISSION DEADLINE</u>
<p>\$500,000 OR MORE expended in federal funds:</p> <p>Single Audit or Program Specific Audit, using GAGAS standards (OMB Circular A-133.200, A-133.235, and A-133.500) AND the following financial reports:</p> <ol style="list-style-type: none"> <u>Data Collection Form</u>, as described in OMB Circular A-133.320 (a), (b) and (d), -- to Federal Clearinghouse. <u>Reporting Package</u> -- to: <ol style="list-style-type: none"> Federal Clearinghouse; and Each federal awarding agency - if audit disclosed Audit Findings or reported the status of any Audit Findings in the Summary Schedule. (OMB Circular A-133.320 (c) and (d)) <u>Submission by Subrecipients:</u> <ol style="list-style-type: none"> “Reporting Package” to each Pass-Through Entity when Audit Findings were disclosed relating to federal awards; “Written Notification” to each Pass-Through Entity when no Audit Findings were disclosed and a Reporting Package was not required. (OMB Circular A-133.320(e)(1) and (e)(2)) 	<p>Thirty (30) days after the Contractor receives the auditor's reports, or nine months after the end of the fiscal year audited, whichever occurs first.</p>	<p>\$500,000 OR MORE expended in federal funds:</p> <ol style="list-style-type: none"> Copy of the entire <u>Single Audit or Program Specific Audit</u>. The auditor’s management letter, if the Single Audit or Program Audit report disclosed any Audit Findings. 	<p>Within six (6) months after the end of the Contractor's fiscal year.</p>
		<p>LESS THAN \$500,000 expended in federal funds, but \$350,000 OR MORE in total revenues or expenditures:</p> <ol style="list-style-type: none"> CPA Audit performed in accordance with GAGAS. The auditor’s management letter, if the GAGAS report disclosed any Audit Findings. 	
		<p>LESS THAN \$350,000, but \$200,000 OR MORE in total revenues or expenditures:</p> <p>Unaudited CPA Review.</p>	
		<p>LESS THAN \$200,000 but \$100,000 OR MORE in total revenues or expenditures:</p> <p>Unaudited CPA Compilation.</p>	
<p>LESS THAN \$500,000 expended in federal funds:</p> <p>No audit required but records must be available for review or audit per OMB Circular A-133.200(d).</p>		<p>LESS THAN \$100,000 in total revenues or expenditures:</p> <p>Financial information on the form approved by the State Auditor.</p>	

¹ There are **no** reporting or auditing **requirements** to the State Auditor’s Office for Non-Profit Organizations that receive **Less Than 50%** of their total funding from Government Funds, regardless of the amount of funding.

Table 2: DHS Annual Financial Reporting Requirements

TYPE OF ENTITY ²				SUBMISSION DEADLINES
Governmental Entities and Non-Profit Subrecipients with \$500,000 OR MORE Expended in Federal Funds	Governmental Entity OR Non-Profit Organization that Receives 50% OR MORE of Its Total Funding from Government Funds	Non-Profit Organization that receives LESS THAN 50% of Its Total Funding from Government Funds OR For-Profit Organization	Foreign Organization	
<p>A copy of the entire Single Audit or Program Specific Audit prepared to meet the Contractor’s federal reporting requirement <u>including</u>:</p> <p>a. The <u>Reporting Package</u> - if audit disclosed Audit Findings or reported the status of any prior Audit Findings in the Summary Schedule;</p> <p>b. The auditor’s <u>Management Letter</u> if one was issued; and</p> <p>c. For Non-profit Subrecipients, the <u>Statement of Functional Expenses</u>.</p>	<p>A copy of the entire report prepared to meet the Contractor’s Utah State reporting requirements and:</p> <p>a. The auditor’s <u>Management Letter</u> if one was issued; and</p> <p>b. A <u>Statement of Functional Expenses</u>.</p>	<p>\$350,000 or MORE received from DHS:</p> <p>1. A CPA Audit performed in accordance with GAGAS.</p> <p>2. The auditor’s <u>Management Letter</u>, if the audit report disclosed any Audit Findings.</p> <p>3. Statement of Functional Expenses.</p>	<p>1. The financial reports of foreign organizations (organizations located outside the State of Utah) shall be accepted as prepared to meet its federal and/or domestic State financial reporting requirements.</p> <p>2. If the foreign organization has a local subsidiary, division, or unit in the State of Utah, the organization shall also submit a <u>Statement of Functional Expenses</u> for the local subsidiary, division or unit in addition to the parent organization’s financial report.</p>	<p>The deadline for submission of the Single Audit or Program Specific Audit when required is thirty (30) days after Contractor receives the auditor's reports, or nine (9) months after end of fiscal year audited, whichever occurs first.</p> <p>The submission deadline for all other types of financial reports, including other types of audits, is within six (6) months after the end of Contractor's fiscal year.</p>
		<p>LESS THAN \$350,000 but \$200,000 OR MORE received from DHS:</p> <p>An unaudited CPA Review, including a Statement of Functional Expenses.</p>		
		<p>LESS THAN \$200,000 but \$100,000 OR MORE received from DHS:</p> <p>An unaudited CPA Compilation, including a Statement of Functional Expenses.</p>		
		<p>LESS THAN \$100,000 but \$25,000 OR MORE received from DHS:</p> <p>A basic Financial Report with a balance sheet and an income/expense statement.</p>		
		<p>LESS THAN \$25,000 received from DHS:</p> <p>No Requirements.</p>		

² There are **no** financial reporting requirements to DHS for Sole Proprietors, Limited Liability Company (LLC) Sole Proprietors, or LLC Husband and Wife Partnerships.

PART VI: BUDGETING PRINCIPLES AND FORMS

SECTION A: BUDGET PRINCIPLES FOR THIS CONTRACT

1. This Contract does **not** require a budget plan from the Contractor.
2. This Contract **requires** a budget plan from the Contractor.
 - a. **CHANGES IN BUDGET (Cost Reimbursement Contracts Only):** The budget, presented in this Part VI, shall be the basis for DHS/DSPD's payments to the Contractor. The Contractor may not make any adjustment in budgeted funds from Category III ("Program Expenses") to either Category I ("Administration") or Category II ("Capital Expenditures") or between Categories I and II, without prior written approval by DHS/DSPD.
 - b. **QUESTIONED COSTS:** DHS/DSPD may consider any expenditures in excess of those budgeted in either Categories I or II as questioned costs that will normally require the Contractor to refund such excesses to DHS/DSPD. The Contractor may, however, shift between either Categories I or II to Category III without prior approval. Expenditures in excess of those budgeted in Category III will not normally result in questioned costs unless DHS/DSPD has placed restrictions on subcategories within this major category. When this Contract restricts expenditures within defined subcategories, DHS/DSPD will consider any unapproved excess to be a questioned cost.

SECTION B: BUDGET FORMS

Insert Budget Statement forms here.

PART VII: 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 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 3, "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 3: 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>	
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	
Equal Employment Opportunity	Exec. Order No. 11246 (1965), as amended by Exec. Order No. 11375; 41 C.F.R. Part 60	
Equal Pay Act	29 U.S.C. § 206(d)	

Description of Act	Applicable Federal Law	Applicable State Law
Fair Labor Standards Act	29 U.S.C. § 201 <i>et seq.</i>	
Immigration Control and Reform Act	8 U.S.C. § 1324	
Identity Documents and Verification		Utah Code § 63G-11-103, <i>et seq.</i>
Protection and Advocacy for Individuals with Mental Illness Act	42 U.S.C. § 10801 <i>et seq.</i>	
Public Health Service Act, Section 522	45 C.F.R. Part 84.53	
Public Health Service Act, 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 Civil Rights Act		Utah Code § 13-7-1 <i>et seq.</i>
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>	
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>	
Utah Clean Air Act		Utah Code § 26-38-1, <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>
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	
Debarment and Suspension	45 C.F.R. Part 76; Exec. Order No. 12549; Exec. Order No. 12689	

Description of Act	Applicable Federal Law	Applicable State Law
Ethics Acts		Utah Code § 67-16-7(2) 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 and Local Government	45 C.F.R. § 92.36	
Utah Human Services Code		Utah Code Title 62A-
Utah Procurement Code		Utah Code § 63G-06-101 <i>et seq.</i>
Utah Procurement Rules		Utah Administrative Code Title R33

PART VIII: DISCLOSURE OF LOBBYING ACTIVITIES

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/sfillin.pdf>

PART IX: 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 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.

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.

4. **SALES TAX EXEMPTION:** The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at:

<http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>.

When tangible personal property or services being purchased are being paid from State funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this governmental entity, unless otherwise stated in the 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/DSPD originally sent it to the Contractor.

IN WITNESS WHEREOF, the parties executed this Contract:

CONTRACTOR

DHS/DSPD

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

Date: _____

By: _____

Division of Services for People with Disabilities
Date: _____

APPROVED AS TO PROCUREMENT

By: _____
DHS Purchasing Agent
DHS Bureau of Contract Management
Date: _____