

**Provider Agreement Number: 3**

**Service Type: Temporary Care**

**Term of Agreement:** \_\_\_\_\_

This Agreement is entered into by and between the State of Connecticut Department of Children and Families, with a primary business location of 505 Hudson Street / Hartford, CT 06106 (hereinafter "the Department" or "the Agency") and

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(hereinafter "the Provider")

**PART I - SERVICE SCOPE**

**A. Service Overview**

***Temporary Care***

Temporary Care is a service that provides a short-term break or intervention for a child or youth. This service should not be used in lieu of daycare services. Temporary care should be used as a time limited service while a more sustainable plan for care is developed.

Some examples of appropriate use of temporary care include but aren't limited to;

- When a child/youth is on a school suspension
- When a child/youth is removed on an emergency basis
- Other scenarios will be reviewed on a case by case basis

In order to emphasize consistency and relationship building, it is expected that the same staff person will continually provide this service throughout the course of care while the child or youth remains involved. Any changes in staff must be discussed with and approved by the Department Area Office.

**B. Services Provided**

The Provider may utilize a variety of interactive activities that will meet the child's or youth's basic health, educational, nutritional and daily living needs. Activities should be mutually agreed upon by Provider, DCF Social Worker and caregiver.

**C. Credentialing Criteria**

***Staff Qualifications***

Must be a minimum of 21 years of age, which will be verified and have at least one year (12 months) of paid work experience consistent with age and needs of the child or youth. Demonstrated experience working with children within the last 5 years. A current resume and a current Statement of Experience is required.

Special Requirements for all Staff: Proof of age and education. A valid Connecticut motor vehicle license, current motor vehicle certificate of insurance, Copy of Diploma from highest education attained, First Aid and CPR certificates issued by a nationally recognized accredited organization are required.

Interns: The use of interns and volunteers in this position is strictly prohibited, but they can be used to perform other duties under the supervision of the Provider.

## ***Insurance***

Current certificate of motor vehicle insurance. All providers transporting youth and/or families must maintain a current certificate of motor vehicle insurance with a state minimum of \$50,000/\$100,000 coverage.

## ***Forms***

Each organization must submit an IRS form W-9 to ABH as part of application packet. For individual providers, an IRS form W-9 must be submitted to ABH with your application packet.

## **D. Target Population**

Children and youth ages 5 to 21 years currently active with the Department. Children under 5 may be considered if they are part of a sibling group. The children and youth may be residing in foster care.

## **E. Access to Services**

The Provider will accept referrals from authorized Department staff. The Provider must be prepared to provide Temporary Care Services at times other than during normal business hours. Temporary care should only be utilized when bio family and foster kin have been identified and assessed prior to service referral.

## **F. Duration of Service**

Temporary Care Services is short-term and can be provided from one to several hours based on the individual need of the child or youth. Services will not be provided during overnight hours. Services may be provided on a regular basis after school or during evening hours. The Department, will approve the provision of Temporary Care Services for a total of 70 hours or 90 days, whichever comes first.

Note: Service hours are not to exceed the total of 70 hours or 90 days, whichever comes first. Providers will only be paid with an approved WAF in place.

## ***Training and Development***

All staff persons providing Temporary Care services must have training in basic First Aid and CPR and maintain valid First Aid and CPR certificates issued by a nationally recognized accredited organization. The Provider is required to participate and have orientation and in-service training for all staff providing services to children and youth that includes, but is not limited to, the following: program philosophy, policies, practices, and procedures; HIPAA; confidentiality; and mandated reporting. The Provider shall only utilize trainers certified by the Department to conduct mandated reporter training or complete the Connecticut Mandated Reporter Training for Community Providers course online at: <http://www.proprofs.com/training/course/?title=connecticut-mandated-reporter-training-community-providers>.

The training needs of all staff will be assessed routinely. Staff will receive training appropriate to their positions and responsibilities to enhance their work with children and youth in ways that promote positive development.

Training will be verified through review of written documentation of trainings including, but not limited to, training assessments and plans, training curricula, attendance sheets, and evaluation forms during on-site-based quality reviews.

The Provider must attend or have representation at a minimum of one Credentialed Provider Meeting annually.

## PART II - TERMS AND CONDITIONS

### A. Administrative Terms

1. **Effective Date:** This Agreement is effective for the term defined on Page 1 and shall remain in full force and effect until the termination date defined on Page 1, unless terminated earlier, as provided for in Part III of this Agreement.
2. **Electronic Communication:** Whenever practicable and permissible, the Provider and the Department shall communicate via electronic mail. This shall include, but not be limited to, electronic submission of contract documents and reports.
3. **Credentialing:** The Provider will maintain written documentation confirming that each individual providing services under this Agreement has and maintains the requisite credentials. Any change in status regarding any credentialing requirements must be reported in writing, by the Provider to the Department's Credentialing Contracted Agent, within ten (10) days. Failure to report such changes may result in decredentialing and termination of this Agreement.
4. **Regulatory Requirements:** The Provider agrees to abide by all relevant Department regulations and policies and state and federal laws and regulations including all reporting requirements as specified by C.G.S. §17a-101 through §17a-103 and C.G.S. §46b-120 related to children; C.G.S. §46a-11b related to persons with developmental disabilities; and C.G.S. §17b-407 related to elderly persons.
5. **Treatment Planning Conference and Administrative Case Review:** The Provider will actively participate in the Department Treatment Planning Conference (TPC) and Administrative Case Review (ACR) process when requested to do so by DCF staff.
6. **Financial Penalties for Failure to Participate in TPC or ACR:** The Department may impose a financial penalty on the Provider if the Provider, following receipt of Department notification, fails to participate in the Department's TPC or ACR Processes. Participation may include the following activities: submission, prior to the ACR, of a written treatment plan summary; telephonic consultation/participation during the ACR; direct participation at the ACR.  
  
Such penalties shall not exceed \$1,000 per occurrence and may, at the discretion of the Department, be withheld from payments to the Provider. The Provider will be notified in writing of the Department's intent to impose this penalty and may appeal the imposition of the penalty to the Director of the Division of Contracts Management. In order to be relieved of a noticed penalty, the Provider must establish to the Department's satisfaction, in its discretion, that notice of the conference date was inadequate to allow participation.
7. **Court Appearances:** The Provider agrees to make available appropriate personnel to appear in court for the purpose of testifying to facts surrounding a client or provider's involvement in services covered by this contract. When necessary, the Provider will provide a written summary in preparation for a juvenile court hearing.
8. **Investigations:** The Provider agrees to cooperate fully with any protective services investigation arising from the delivery of services covered by this contract. The Provider will develop and implement policy addressing administrative leave procedures for staff identified in a protective services or criminal investigation. Additionally, the Provider shall cooperate with Department or State Agency staff on the conduct of any state-conducted investigation when participation of the Provider in such investigation is requested by the investigating source.
9. **Ethics:** The Provider agrees to ensure that each individual providing services under this Agreement operates ethically in accordance with the Provider's ethics policy and state ethics laws and, as appropriate, in compliance with all relevant Codes of Ethics, Professional Standards or Best Practice Guidelines of the profession(s) represented. The provisions of the state ethics statutes and the Code of Ethics, Professional Standards or Best Practice Guidelines of the professions shall supersede anything to the contrary contained in the policies of the Provider or the Provider's procedures and practices. The Provider will sign the

**10. Cultural Competence:**

- (a) The Provider shall administer, manage and deliver a culturally responsive and competent program. This shall, at a minimum, be evidenced by equity and parity in access to services, consumer satisfaction, and outcomes for clients served, regardless of race, ethnicity, language, religion, gender, sexual orientation, economic status and/or disability. Policies, practices and quality improvement activities shall be informed by the needs and demographics of the individuals served or to be served by the program.
- (b) The Provider shall recruit, hire and retain a professional and paraprofessional staff that are culturally and linguistically diverse and reflective of the diversity of individuals the Provider serves. Furthermore, as a means to facilitate culturally competent service delivery, issues of diversity and multiculturalism shall be included in treatment/service planning, discharge planning, case reviews, and staff supervision.

**11. Connecticut False Claims Act ("CT FCA"):** The Provider must follow the "CT FCA" – Connecticut General Statutes Chapter 55e- Section §4-274 through §4-289. The C.G.S section §4-275 False claims and other prohibited acts refers to individuals who present a false or fraudulent claim for payment or approval (e.g. double billing; billing for services not being provided; billing for excessive or unnecessary services, billing at rates outside of promulgated fee schedules, etc.).

Note: Definition C.G.S. §4-274(1) – An act is also done "knowingly" if the Individual: a) Acts in deliberate ignorance of the truth or falsity of information or; b) Acts in reckless disregard to the truth or falsity, regardless of whether the person intends to defraud. Any person who violates this provision shall be liable to the state. The Attorney General may investigate any violation of the C.G.S. Section §4-275 (a).

**12. Utilization:** This Agreement does not constitute, in any way, a guarantee of utilization of the provider's services.

**13. Discretionary Services Fee Schedule:** The Provider shall abide by the then-promulgated Discretionary Services Fee Schedule for the service type defined in Part I of this Agreement. Quotes outside of these rates will not be honored for payment. If services are performed against a quote outside of the established Fee Schedule, the Fee Schedule shall be the payment determinant.

**14. Service Requests (WAF):** DCF reserves the right to deny payment for any services implemented prior to execution of a WAF. All WAFs from Department staff must be submitted prior to engagement of the provider in services and must meet the following conditions:

- (a) be approved by Area Office management before services begin;
- (b) be submitted on the approved, promulgated DCF authorization form (currently the WAF); and
- (c) be inclusive of price quotes that are in compliance with the Department's then-promulgated Discretionary Services Fee Schedule.

**15. Payment for Services:** No payment shall be made by the Department absent a request for services that meets the conditions defined in #14 above. The payment mechanism for such services shall be fee for service. Invoices shall be submitted the month following the month of service, with the Department having a 45-day remit timeframe beginning on the date of clean invoice submission. All invoices must be accompanied by monthly progress reports as required per Part I of this Agreement.

- (a) Invoices shall be submitted per child and shall not be combined with multiple children on one invoice unless the WAF specifically requests services to a sibling group, in which case, the invoice should be submitted for the sibling group with costs split equitably across each child.
- (b) Invoices shall be submitted on a monthly basis, by the 10<sup>th</sup> of the month immediately following the month of service.
- (c) Invoices shall be submitted electronically to the designated email box, by DCF Area Office.
- (d) Invoices shall include the following information:
  - Provider Name;
  - Provider LINK ID Number;
  - Requesting Social Worker Name;
  - Requesting DCF Area Office;
  - Client name;
  - Client LINK ID Number;

- Dates of Each Service;
- Number of Hours for Each Service;
- Hourly Per Diem Rate; and
- Total Cost

(e) Invoices shall be accompanied by ACR, Child Family Teaming Invitations, and/or Subpoenas with each invoice for reimbursement eligibility.

**16. Clean Invoice Submission:** An invoice shall be considered 'clean' for purposes of payment timeframes, when it is submitted against a valid WAF, contains all of the information delineated in #15(d) above, and costs are in accordance with then-promulgated Discretionary Fee Schedule rates. Invoices not in compliance with any of these components will not be processed for payment until they comply with all of these components and shall not be considered aging or outstanding until they are revised.

**17. Account Management:** Aging Statements shall be submitted monthly to the designated email box, by DCF Area Office, by the 10<sup>th</sup> of every month. Aging Statements shall be inclusive of all invoices unpaid as of the last day of the previous month. Invoices submitted for payment after this timeframe for service dates before this timeframe, not included on the previous Aging Statement may not be considered for payment.

**18. Recoupment of Payments:** The Department reserves the right to recover any overpayments.

**19. Quality Assurance:** The Provider will have a quality assurance/improvement system to monitor and enhance its business practices, organizational structure, oversight and supervision, staff and system performance, and service delivery and provision.

The Provider shall implement recognized effective business practices and shall follow relevant federal and state regulations to provide professional services and interventions.

The Department may complete a review of the program and/or services utilizing a variety of sources to obtain a broad, comprehensive, and objective perspective of the Provider's fidelity to requirements, operation, and effectiveness. This review will assist the Provider in determining areas of strength, areas that may need support and modification, to enhance outcomes for children and youth. Program Improvement Plans or conditions designed to improve performance may be developed based on the results of the review. The Provider must maintain documentation of the implementation of the Program Improvement Plan or fulfillment of the conditions designed to improve performance. The Department will review the improvement plan and any relevant documentation during on-site quality reviews.

**20. Physical Restraint:** Physical restraint of any child or youth served under this Agreement is strictly prohibited and will result in immediate de-credentialing and possible criminal charges.

**21. Safety and Security:** The Provider shall have a plan with clear procedures that present a consistent, coordinated approach for managing and reporting emergencies and urgent circumstances that may arise while providing services to help ensure the safety and security of the child or youth and other parties involved. The Provider will immediately notify the Department Area Office assigned staff during business hours and/or the Careline (1-800-842-2288) of any emergency or urgent circumstance. The Provider should not leave voicemail messages when reporting a concern. The Provider and its employees shall follow mandated reporting requirements for suspected child abuse and neglect.

**22. Identification Badges:** Identification badges will be supplied by Advanced Behavioral Health (ABH) to all credentialed individuals who are providing services to children. Badges must be presented to the child/youth and any present adults at the time of service and must be worn for the duration of the service. Badges will be updated every two years during the re-credentialing process. Any individual or agency who fails to submit a photo ID to ABH within the designated timeframe will have their credentialing status terminated.

**23. Use of State Resources:** The Provider may not utilize any state resources to market the services and/or program it offers. The Provider shall not utilize the DCF logo and/or affiliation in any advertisement for the agency. Additionally, the Providers/Agencies shall not solicit business through state supported e-mail systems.

- 24. Re-credentialing:** The Provider must reapply for continued participation status once every two (2) years from the initial approval date. All required re-credentialing documents must be submitted to the Credentialing Contracted Agent before the day the current approval expires. Failure to submit all required re-credentialing documents will result in termination of credentialed status. The Contracted Agent will send a Termination Notice if the Provider fails to comply with this regulation. The Provider is eligible to apply for re-credentialing after 6 (six) months from the day the Termination Notice was sent. The Provider is not allowed to provide any credentialed services for 6 (six) months or at any time when the Provider is not credentialed. In addition, Staff must remain in compliance relating to all required materials (including but not limited to: background checks, motor vehicle license, motor vehicle insurance, first aid and CPR certification, mandated reporter training, staff photo) Should the provider fail to comply with these requirements for continued participation status, the staff is no longer allowed to provide services as an approved provider and will be terminated and remain ineligible to reapply for a period of six (6) months.
- 25. Credentialing Process:** The full Credentialing process is governed by DCF Policy 31-12-12.3 which can be found under "Policy and Regulations" on the Department website: <http://www.ct.gov/dcf>.
- 26. Continuation of Provider Services after Termination of Agreement:** The Provider or the Department may terminate a Provider Agreement, with written notice, according to the terms of the Agreement and DCF Policy 31-12-12.3. The notice of de-credentialing and termination of a Provider Agreement shall include a time frame determined by DCF for the transition of clients to other providers unless there are safety concerns that require an immediate transition. DCF reserves the right to change the time frame and effective date of termination if circumstances warrant.
- 27. Background Checks:** The Provider will maintain written documentation confirming that background checks, including the Department's Child Abuse and Neglect Registry, criminal history, and sex offender registry have been completed for all staff providing direct service as well as all key personnel. [Note: sex offender registry checks will be completed by the Credentialing Contracted Agent.] Background checks will be dated not longer than 6 (six) months prior to the date of this application. The Department's Child Abuse and Neglect Registry background checks must be completed by authorized personnel at the Department's Careline; criminal background checks must be completed by the State of Connecticut Department of Emergency Services and Public Protection. The Provider must submit official results of all background checks to the contracted credentialing agent of the department as part of the credentialing application.
- 28. Continuous Monitoring and Staff Termination:** All required continuous monitoring documents requested by the Contracted Agent and pertaining to each staff person shall be submitted prior to the expiration date of each document. The Contracted Agent will send a termination notice for non-compliance referencing the staff person to the provider. The staff person will be removed from the roster of approved staff persons and is eligible to re-apply for credentialing six (6) months from the date of the Termination Notice. The staff person is ineligible to provide credentialed services for any entity during the 6 months or at any time when not credentialed.
- 29. Credentialed Service Provider Handbook:** All Providers shall be required to adhere to the terms and conditions of the Credentialed Service Provider Handbook promulgated by the Department and the Department's Credentialed Administrative Services Organization.

### **PART III - STATE MANDATED PROVISIONS**

State Mandated Provisions: The Provider shall comply with the following terms and conditions.

- A. Definitions.** Unless otherwise indicated, the following terms shall have the following corresponding definitions:
- 1. "Cancellation"** shall mean an end to the Agreement affected pursuant to a right which the Agreement creates due to a Breach.
  - 2. "Claims"** shall mean all actions, suits, claims, demands, investigations and proceedings of any kind, open pending or threatened, whether mature, unmaturing, contingent, known or unknown, at law or in equity, in any forum.
  - 3. "Client"** shall mean a recipient of the Provider's Services.
  - 4. " Provider Agreement"** shall mean this agreement, as of its effective date, between the Provider and the State for Services.

5. **"Data"** shall mean all results, technical information and materials developed and/or obtained in the performance of the Services hereunder, including but not limited to all reports, survey and evaluation tools, surveys and evaluations, plans, charts, recordings (video and/or sound), pictures, curricula, electronically prepared presentations, public awareness or prevention campaign materials, drawings, analyses, graphic representations, computer programs and printouts, notes and memoranda, and documents, whether finished or unfinished, which result from or are prepared in connection with the Services performed hereunder.
6. **"Expiration"** shall mean an end to the Agreement due to the completion in full of the mutual performances of the parties or due to the Agreement's term being completed.
7. **"Force Majeure"** shall mean events that material affect the Services or the time schedule within which to perform and are outside the control of the party asserting that such an event has occurred, including, but not limited to labor troubles unrelated to the Provider, failure of or inadequate permanent power, unavoidable casualties, fire not caused by the Provider, extraordinary weather conditions, disasters, riots, acts of God, insurrection of war.
8. **"Confidential Information"** shall mean any name, number or other information that may be used, alone or in conjunction with any other information to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the forgoing, Confidential Information shall also include any information regarding clients that the Agency classifies as "confidential" or "restricted". Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
9. **"Confidential Information Breach"** shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Agency, the Provider or the State.
10. **"Records"** shall mean all working papers and such other information and material as may have been accumulated and/or produced by the Provider in performing the Agreement, including but not limited to , documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, correspondence, and program and individual service.
11. **"Services"** shall mean the performance of Services as stated in Part I of this Agreement.
12. **"State"** shall mean the State of Connecticut, including any agency, office, department, board, council, commission, institution or other executive branch agency of State Government.
13. **"Termination"** shall mean an end to the Agreement affected pursuant to a right which the Agreement creates, other than for a Breach.

**B. Client-Related Safeguards.**

1. **Safeguarding Client Information.** The Agency and the Provider shall safeguard the use, publication and disclosure of information on all applicants for and all Clients who receive Services under this Agreement with all applicable federal and state law concerning confidential and as may be further provided under the Agreement.
2. **Reporting of Client Abuse or Neglect.** The Provider shall comply with all reporting requirements relative to Client abuse and neglect, including but not limited to requirements as specified in C.G.S. §§ 17a-101 through 17a-101q, inclusive, 17a-102a, 17a-103 through 17a-103e, inclusive, 19a-216, 46b-120 (related to children); C.G.S. § 46a-11b (relative to persons with intellectual disabilities or any individual who receives services from the State); and C.G.S. § 17a-412 (relative to elderly persons).
3. **Background Checks.** The State may require that the Provider undergo criminal background checks as provided for in the State of Connecticut Department of Emergency Services and Public Protection Administration and Operations Manual or such

other State document as governs procedures for background checks. The Provider shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

### **C. Provider Obligations.**

#### **1. Audit and Inspection of Plant, Places of Business and Records.**

- (a) The Provider shall maintain accurate and complete Records. The Provider shall make all of its Records available at all reasonable hours for audit and inspection by the State and its agents.
- (b) The State shall make all requests for any audit or inspection in writing and shall provide the Provider with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (c) The Provider shall keep and preserve all of its Records until three (3) years after the latter or (i) final payment under this Agreement, (ii) the expiration or earlier termination of this Agreement, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Provider shall retain or cause to be retained all Record until all Claims or audit findings have been resolved.
- (d) The Provider shall cooperate fully with the State and its agents in connection with an audit or inspection. Following an audit or inspection, the State may conduct and the Provider shall cooperate with an exit conference.

#### **2. Suspension or Debarment.**

- (a) The Provider certifies that they:
  1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any government agency (federal, state or local);
  2. Within a three year period preceding the effective date of this Agreement, have not been convicted or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or Agreement under a public transaction; for violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;
  3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the above offenses; and
  4. Have not with a three (3) year period preceding the effective date of this Agreement had one or more public transactions terminated for cause or fault.
- (b) Any change in the above status shall be immediately reported to the Agency.

#### **3. Independent Capacity of Provider.** The Provider shall act in an independent capacity and not as officers or employees of the state of Connecticut or of the Agency.

#### **4. Indemnification.**

- (a) The Provider shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Agreement, including the acts of commission or omission (collectively, the "Acts") of the Provider; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts of the Agreement. The Provider shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Provider's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning (i) the confidentiality of any part of or all of the Provider's application, and (ii) records, intellectual property rights, other proprietary rights of any person or entity, copyrighted or



uncopyrighted compositions, secret processes, patented or unpatented inventions, or Goods furnished or used in the performance of the Agreement. For purposes of this provision, "Goods" means all things which are movable at the time that the Agreement is effective, and which includes, without limiting this definition, supplies, material and equipment.

- (b) The Provider shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Provider. The State shall give the Provider reasonable notice of any such Claims
- (c) The Provider's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Agreement, without being lessened or compromised in any way, even where the Provider is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims and/or where the State is alleged or is found to have merely contributed in part to the Acts giving rise to the Claims. The Provider shall not be responsible for indemnifying or holding the State harmless from any liability solely from the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (d) The Provider shall carry and maintain at all times during the term of the Agreement, and during the time that any provisions survive the term of the Agreement, sufficient general liability insurance to satisfy its obligations under this Agreement. The Provider shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Agreement. The Provider shall not begin Performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (e) This section shall survive the Termination of the Agreement and shall not be limited by reason of any insurance coverage.

**5. Sovereign Immunity.** The Provider acknowledges and agrees that nothing in the Agreement, or the solicitation leading up to the Agreement, shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State of any of its officers and employees, which they may have had now have or will have with respect to all matters arising out of the Agreement. To the extent that this Section conflicts with any other Section, this Section shall govern.

**6. Choice of Law/Choice of Forum, Settlement of Disputes, Claims Against the State.**

- (a) The Agreement shall be deemed to have been made in the City of Hartford, State of Connecticut. Both Parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Provider waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.
- (b) Any dispute concerning interpretation or application of this Agreement shall be decided by the Agency Head or his/her designee whose decision shall be final, subject to any rights the Provider may have pursuant to state law. In appealing a dispute to the Agency Head pursuant to this section, the Provider shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final resolution of a dispute, the Provider and the Agency shall proceed diligently with the performance of the Agreement.
- (c) The Provider agrees that the sole and exclusive means for the presentation of any claim against the State arising from this Agreement shall be in accordance with Title 4, Chapter 53 of the Connecticut General Statutes (Claims Against the State) and the Provider further agrees not to initiate legal proceedings, except as authorized by the Chapter, in any state or federal court in addition to or in lieu of said Chapter 53 proceedings.

- 7. Compliance with Law and Policy, Facility Standards and Licensing.** Provider shall comply with all:
- (a) Pertinent local, state and federal laws and regulations as well as Agency policies and procedures applicable to Provider's programs as specified in this Agreement. The Agency shall notify the Provider of any applicable new or revised laws, regulations policies or procedures which the Agency has responsibility to promulgate or enforce; and
  - (b) Applicable local, state and federal licensing, zoning, building, health, fire and safety regulations or ordinances, as well as standards and criteria of pertinent state and federal authorities. Unless otherwise provided by law, the Provider is not relieved of compliance while formally contesting the authority to require such standards, regulations, statutes, ordinance or criteria.
- 8. Representations and Warranties.** Provider shall:
- (a) Perform fully under the Agreement;
  - (b) Pay for and/or secure all permits, licenses and fees and give all required or appropriate notices with respect to the provision of Services as described in Part I of this Agreement; and
  - (c) Adhere to all sections of this Agreement ensuring the confidentiality of all Records that the Provider has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law.
- 9. Reports.** The Provider shall provide the Agency with such statistical and client specific programmatic information necessary to monitor and evaluate compliance with the Agreement. All requests for such information shall comply with all applicable state and federal confidentiality laws. The Provider shall provide the Agency with such reports as the Agency requests as required by this Agreement
- 10. Delinquent Reports.** The Provider shall submit required reports by the designated due dates as identified in this Agreement. After notice to the Provider and an opportunity for a meeting with an Agency representative, the Agency reserves the right to withhold payments for services performed under this Agreement if the Agency has not received acceptable progress reports, expenditure reports, refunds, and/or audits as required by this Agreement or previous Agreements for similar or equivalent services the Provider has entered into with the Agency. This section shall survive any Termination of the Agreement or the Expiration of its term.
- 11. Protection of Confidential Information.**
- (a) Provider, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
  - (b) Each Provider shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Agency or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
    - i. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
    - ii. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
    - iii. A process for reviewing policies and security measures at least annually;
    - iv. Creating secure access controls to Confidential Information, including but not limited to passwords; and
    - v. Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
  - (c) The Provider shall notify the Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Provider has come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Provider shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Agency and the Connecticut Office of the Attorney General, for review and approval. Such Credit monitoring or protection plan shall be made available by the Provider at its own cost and

expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to C.G.S. § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Providers' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Agency, any State of Connecticut entity or any affected individuals.

- (d) Nothing in this Section shall supersede in any manner Provider's obligations pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or the provisions of this Agreement concerning the obligations of the Provider as a Business Associate of Covered Entity.

## **12. Litigation.**

- (a) The Provider shall disclose any Claims that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to perform fully under the Agreement, no later than ten (10) days after becoming aware or after they should have become aware of any such Claims. Disclosure shall be in writing.
- (b) The Provider shall provide written Notice to the Agency of any final decision by any tribunal or start or federal agency or court which is adverse to the Provider or which results in a settlement, compromise or claim or agreement of any kind for an action or proceeding brought against the Provider or its employee or agent under the Americans with Disabilities Act of 1990 as revised or amended from time to time, Executive Orders Nos. 3 & 17 of Governor Thomas J. Meskill and any other requirements of federal or state law concerning equal employment opportunities or nondiscriminatory practices.

## **D. Changes to the Agreement, Termination, Cancellation and Expiration.**

### **1. Provider Changes and Assignment.**

- (a) The Provider shall notify the Department's Administrative Service Organization in writing:
  - i. At least ninety (90) days prior to the effective date of any fundamental changes in the Provider's corporate status, including merger, acquisition, transfer or assets, and any change in fiduciary responsibility;
  - ii. No later than ten (10) days from the effective date of any change in:
    - 1. Its certificate of incorporation or other organizational document;
    - 2. More than a controlling interest in the ownership of the Provider; or
    - 3. The individual(s) in charge of the performance.
- (b) No such change shall relieve the Provider of any responsibility for the accuracy and completeness of the performance. The Agency, after receiving written Notice from the Provider of any such change, may require such Agreements, releases and other instruments evidencing, to the Agency's satisfaction, that any individuals retiring or otherwise separating from the Provider have been compensated in full or that allowance has been made for compensation in full, for all work performed under terms of the Agreement. The Provider shall deliver such documents to the Agency in accordance with the terms of the Agency's written request. The Agency may also require, and the Provider shall deliver, a financial statement showing the solvency of the Provider is maintained. The death of any Provider Party, as applicable, shall not release the Provider from the obligation to perform under the Agreement; the surviving Provider entity, as appropriate, must continue to perform under the Agreement until performance is fully completed.
- (c) Assignment. The Provider shall not assign any of its rights or obligations under the Agreement, voluntarily or otherwise, in any manner without the prior written consent of the Agency.
  - i. The Provider shall comply with requests for documentation deemed to be appropriate by the agency in considering whether to consent to such assignment.
  - ii. The Agency shall notify the Provider of its decision no later than forty-five (45) days from the date the Agency receives all requested documentation.
  - iii. The Agency may void any assignment made without the Agency's consent and deem such assignment to be a violation of this Section and to be in Breach of the Agreement. Any cancellation of this Agreement by the Agency for a Breach shall be without prejudice to the Agency's or the State's rights or possible claims against the Provider.

- (d) The Department reserves the right to temporarily or permanently decredential any provider entity engaging in the above activities until such time as the surviving entity has been vetted in accordance with all then-promulgated credentialing requirements.

#### **4. Ending the Agency/Provider Relationship**

- (a) This Agreement shall remain in full force and effect for the duration of its entire term or until such time as it is terminated earlier by either party or cancelled. Either party may terminate this Agreement by providing written notice to the other party.
- (b) The Agency may immediately terminate the Agreement in whole or in part whenever the Agency makes a determination that such termination is in the best interest of the State. The Agency may immediately terminate or cancel this Agreement in the event that the Provider becomes financially unstable to the point of threatening its ability to conduct the services required under this Agreement, ceases to conduct business in the normal course, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or its assets.
- (c) The Agency may immediately terminate this Agreement if the Provider utilizes non-credentialed staff in the performance of services to any child referred by the Agency.
- (d) The Agency shall notify the Provider in writing of Termination pursuant to subsection (b) above, which shall specify the effective date of termination and the extent to which the Provider must complete or immediately cease performance. Upon receiving the Notice from the Agency, the Provider shall discontinue all Services affected in accordance with the Notice, undertake all reasonable and necessary efforts to mitigate any losses of damages, and deliver to the Agency all Records as, unless otherwise instructed by the Agency in writing, and take all actions that are necessary or appropriate, or that the Agency may reasonable direct, for the protection of Clients. Such Records are deemed to be the property of the Agency and the Provider shall deliver them to the Agency no later than thirty (30) days after the Termination of the Agreement or fifteen (15) days after the Provider receives a written request from the Agency for the specified records whichever is less. The Provider shall deliver those Records that exist in electronic, magnetic or other intangible form in a non-proprietary format, such as but not limited to ASCII or .TXT. as instructed by the Agency.
- (e) The Agency may terminate the Agreement at any time without prior notice when at its sole discretion it has determined that the health welfare or safety of its clients has been compromised.

#### **E. Statutory and Regulatory Compliance.**

In this Section E. the term "Contract" shall mean "Provider Agreement" as defined in PART III, Section A. 4. And "Contractor" shall mean "the Provider" as named in PART I of the Provider Agreement.

##### **1. Health Insurance Portability and Accountability Act of 1996.**

- (a) The Contactor is a Business Associate under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and must comply with all terms and conditions of this Section of the Contract.
- (b) The Contractor is required to safeguard the use, publication and disclosure of information on all applicants for, and all clients who receive, services under the Contract in accordance with all applicable federal and state law regarding confidentiality, which includes but is not limited to HIPAA, more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, and E; and
- (c) The State of Connecticut Agency named on page 1 of this Contract ("Agency") is a "covered entity" as that term is defined in 45 C.F.R. § 160.103; and
- (d) The Contractor is a "business associate" of the Agency, as that term is defined in 45 C.F.R. § 160.103; and
- (e) The Contractor and the Agency agree to the following in order to secure compliance with the HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), (Pub. L. 111-5, §§ 13400 to 13423), and more specifically with the Privacy and Security Rules at 45 C.F.R. Part 160 and Part 164, subparts A, C, D and E (collectively referred to herein as the "HIPAA Standards").
- (f) Definitions
  - (1) "Breach" shall have the same meaning as the term is defined in section 45 C.F.R. 164.402 and shall also include any use or disclosure of PHI that violates the HIPAA Standards.
  - (2) "Business Associate" shall mean the Contractor.
  - (3) "Covered Entity" shall mean the Agency of the State of Connecticut named on page 1 of this Contract.

- (4) "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
  - (5) "Electronic Health Record" shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. §17921(5)).
  - (6) "Individual" shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
  - (7) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
  - (8) "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, and includes electronic PHI, as defined in 45 C.F.R. 160.103, limited to information created, maintained, transmitted or received by the Business Associate from or on behalf of the Covered Entity or from another Business Associate of the Covered Entity.
  - (9) "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
  - (10) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
  - (11) "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
  - (12) "This Section of the Contract" refers to the HIPAA Provisions stated herein, in their entirety.
  - (13) "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.
  - (14) "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
  - (15) "Unsecured protected health information" shall have the same meaning as the term as defined in 45 C.F.R. 164.402.
- (g) Obligations and Activities of Business Associates.
- (1) Business Associate agrees not to use or disclose PHI other than as permitted or required by this Section of the Contract or as Required by Law.
  - (2) Business Associate agrees to use and maintain appropriate safeguards and comply with applicable HIPAA Standards with respect to all PHI and to prevent use or disclosure of PHI other than as provided for in this Section of the Contract and in accordance with HIPAA standards.
  - (3) Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
  - (4) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by Business Associate in violation of this Section of the Contract.
  - (5) Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Section of the Contract or any security incident of which it becomes aware.
  - (6) Business Associate agrees, in accordance with 45 C.F.R. 502(e)(1)(ii) and 164.308(d)(2), if applicable, to ensure that any subcontractors that create, receive, maintain or transmit protected health information on behalf of the business associate, agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information.
  - (7) Business Associate agrees to provide access (including inspection, obtaining a copy or both), at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. Business Associate shall not charge any fees greater than the lesser of the amount charged by the Covered Entity to an Individual for such records; the amount permitted by state law; or the Business Associate's actual cost of postage, labor and supplies for complying with the request.
  - (8) Business Associate agrees to make any amendments to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of the Covered Entity, and in the time and manner designated by the Covered Entity.
  - (9) Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained, transmitted or received by, Business Associate on behalf of Covered Entity, available to Covered Entity or to the Secretary in a time and manner agreed to by the parties or designated by the Secretary, for purposes of the Secretary investigating or determining Covered Entity's compliance with the HIPAA Standards..
  - (10) Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in

accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.

- (11) Business Associate agrees to provide to Covered Entity, in a time and manner designated by the Covered Entity, information collected in accordance with subsection (g)(10) of this Section of the Contract, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees at the Covered Entity's direction to provide an accounting of disclosures of PHI directly to an individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
- (12) Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- (13) Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to the Covered Entity and with the requirements of 45 C.F.R. §§ 164.504(e), 164.308, 164.310, 164.312, and 164.316.
- (14) In the event that an individual request that the Business Associate
  - (A) restrict disclosures of PHI;
  - (B) provide an accounting of disclosures of the individual's PHI;
  - (C) provide a copy of the individual's PHI in an electronic health record; or
  - (D) amend PHI in the individual's designated record set the Business Associate agrees to notify the Covered Entity, in writing, within five business days of the request.
- (15) Business Associate agrees that it shall not, and shall ensure that its subcontractors do not, directly or indirectly, receive any remuneration in exchange for PHI of an Individual without
  - (A) the written approval of the covered entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Contract and
  - (B) the valid authorization of the individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act, (42 U.S.C. § 17935(d)(2)) and in any accompanying regulations.
- (16) Obligations in the Event of a Breach.
  - (A) The Business Associate agrees that, following the discovery by the Business Associate or by a subcontractor of the Business Associate of any use or disclosure not provided for by this section of the Contract, any breach of unsecured protected health information, or any Security Incident, it shall notify the Covered Entity of such breach in accordance with Subpart D of Part 164 of Title 45 of the Code of Federal Regulations and this Section of the Contract.
  - (B) Such notification shall be provided by the Business Associate to the Covered Entity without unreasonable delay, and in no case later than 30 days after the breach is discovered by the Business Associate, or a subcontractor of the Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to 45 C.F.R. 164.412. A breach is considered discovered as of the first day on which it is, or reasonably should have been, known to the Business Associate or its subcontractor. The notification shall include the identification and last known address, phone number and email address of each individual (or the next of kin of the individual if the individual is deceased) whose unsecured protected health information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.
  - (C) The Business Associate agrees to include in the notification to the Covered Entity at least the following information:
    1. A description of what happened, including the date of the breach; the date of the discovery of the breach; the unauthorized person, if known, who used the PHI or to whom it was disclosed; and whether the PHI was actually acquired or viewed.
    2. A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
    3. The steps the Business Associate recommends that Individual(s) take to protect themselves from potential harm resulting from the breach.
    4. A detailed description of what the Business Associate is doing or has done to investigate the breach, to mitigate losses, and to protect against any further breaches.
    5. Whether a law enforcement official has advised the Business Associate, either verbally or in writing, that he or she has determined that notification or notice to Individuals or the posting required under 45 C.F.R. 164.412 would impede a criminal investigation or cause damage to national security and; if so, contact information for said official.

- (D) If directed by the Covered Entity, the Business Associate agrees to conduct a risk assessment using at least the information in subparagraphs 1 to 4, inclusive of (g) (16) (C) of this Section and determine whether, in its opinion, there is a low probability that the PHI has been compromised. Such recommendation shall be transmitted to the Covered Entity within 20 business days of the Business Associate's notification to the Covered Entity.
- (E) If the Covered Entity determines that there has been a breach, as defined in 45 C.F.R. 164.402, by the Business Associate or a subcontractor of the Business Associate, the Business Associate, if directed by the Covered Entity, shall provide all notifications required by 45 C.F.R. 164.404 and 45 C.F.R. 164.406.
- (F) Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed of a breach have the opportunity to ask questions and contact the Business Associate for additional information regarding the breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its Web site and a postal address. Business Associate agrees to include in the notification of a breach by the Business Associate to the Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by the Contractor.
- (G) Business Associate agrees that, in the event of a breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to the Covered Entity.
- (h) Permitted Uses and Disclosure by Business Associate.
  - (1) General Use and Disclosure Provisions Except as otherwise limited in this Section of the Contract, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.
  - (2) Specific Use and Disclosure Provisions
    - (A) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
    - (B) Except as otherwise limited in this Section of the Contract, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
    - (C) Except as otherwise limited in this Section of the Contract, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
- (i) Obligations of Covered Entity.
  - (1) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
  - (2) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual(s) to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
  - (3) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- (j) Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Standards if done by the Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Section of the Contract.
- (k) Term and Termination.
  - (1) Term. The Term of this Section of the Contract shall be effective as of the date the Contract is effective and shall terminate when the information collected in accordance with provision (g)(10) of this Section of the Contract is provided to the Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

- (2) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (A) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - (B) Immediately terminate the Contract if Business Associate has breached a material term of this Section of the Contract and cure is not possible; or
  - (C) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- (3) Effect of Termination.
  - (A) Except as provided in (k)(2) of this Section of the Contract, upon termination of this Contract, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with section (g)(10) of this Section of the Contract to the Covered Entity within ten business days of the notice of termination. This section shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
  - (B) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Section of the Contract to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that the Business Associate maintains or preserves the PHI or copies thereof.
- (l) Miscellaneous Sections.
  - (1) Regulatory References. A reference in this Section of the Contract to a section in the Privacy Rule means the section as in effect or as amended.
  - (2) Amendment. The Parties agree to take such action as is necessary to amend this Section of the Contract from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
  - (3) Survival. The respective rights and obligations of Business Associate shall survive the termination of this Contract.
  - (4) Effect on Contract. Except as specifically required to implement the purposes of this Section of the Contract, all other terms of the Contract shall remain in force and effect.
  - (5) Construction. This Section of the Contract shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this Section of the Contract shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
  - (6) Disclaimer. Covered Entity makes no warranty or representation that compliance with this Section of the Contract will be adequate or satisfactory for Business Associate's own purposes. Covered Entity shall not be liable to Business Associate for any claim, civil or criminal penalty, loss or damage related to or arising from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to the sections of this Contract or applicable law. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
  - (7) Indemnification. The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that may be imposed or assessed pursuant to HIPAA, as amended or the HITECH Act, including, without limitation, attorney's fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded thereunder, relating to or arising out of any violation by the Business Associate and its agents, including subcontractors, of any obligation of Business Associate and its agents, including subcontractors, under this section of the contract, under HIPAA, the HITECH Act, and the HIPAA Standards.

2. **Americans with Disabilities Act.** The Provider shall be and remain in compliance with the Americans with Disabilities Act of 1990 (<http://www.ada.gov/>) as amended from time to time ("ADA") to the extent applicable, during the term of the Agreement. The Agency may cancel or terminate this Agreement if the Provider fails to comply with the ADA. The Provider represents that it is familiar with the terms of this Act and that it is in compliance with the law. The Provider warrants that it shall hold the State



harmless from any liability which may be imposed upon the state as a result of any failure of the Provider to be in compliance with this ADA. As applicable, the Provider shall comply with § 504 of the Federal Rehabilitation Act of 1973, as amended from time to time, 29 U.S.C. § 794 (Supp. 1993), regarding access to programs and facilities by people with disabilities.

**3. Utilization of Minority Business Enterprises.** The Provider shall perform under this Agreement in accordance with 45 C.F.R. Part 74; and, as applicable, C.G.S. §§ 4a-60 to 4a-60a and 4a-60g to carry out this policy in the award of any subcontracts.

**4. Priority Hiring.** Subject to the Provider's exclusive right to determine the qualifications for all employment positions, the Provider shall give priority to hire welfare recipients who are subject to time-limited welfare and must find employment. The Provider and the Agency shall work cooperatively to determine the number and types of positions to which this Section shall apply.

**5. Non-discrimination**

(a) For purposes of this Section, the following terms are defined as follows:

- (1) "Commission" means the Commission on Human Rights and Opportunities;
- (2) "Contract" and "contract" include any extension or modification of the Contract or contract;
- (3) "Contractor" and "contractor" include any successor or assigns of the Contractor or contractor;
- (4) "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose.
- (5) "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
- (6) "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
- (7) "marital status" means being single, married as recognized by the State of Connecticut, widowed, separated or divorced;
- (8) "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
- (9) "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of C.G.S. § 32-9n; and
- (10) "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

- (b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and C.G.S. §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to C.G.S. §§ 46a-56, 46a-68e, 46a-68f and 46a-86; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and C.G.S. § 46a-56. If the contract is a public works contract, municipal public works contract or contract for a quasi-public agency project, the Contractor agrees and warrants that he or she will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works or quasi-public agency projects.
- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and in every subcontract entered into in order to fulfill any obligation of a municipal public works contract for a quasi-public agency project, and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with C.G.S. § 46a-56, as amended; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission regarding a State contract, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to

C.G.S. § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and C.G.S. § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with C.G.S. § 46a-56 as amended; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission regarding a State contract, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

**6. Freedom of Information.**

- (a) Contractor acknowledges that the Agency must comply with the Freedom of Information Act, C.G.S. §§ 1-200 et seq. ("FOIA") which requires the disclosure of documents in the possession of the State upon request of any citizen, unless the content of the document falls within certain categories of exemption, as defined by C.G.S. § 1-210(b).
- (b) Governmental Function. In accordance with C.G.S. § 1-218, if the amount of this Contract exceeds two million five hundred thousand dollars (\$2,500,000), and the Contractor is a "person" performing a "governmental Function", as those terms are defined in C.G.S. § 1-200(4) and (11), the Agency is entitled to receive a copy of the Records and files related to the Contractor's performance of the governmental function, which may be disclosed by the Agency pursuant to the FOIA.

- 7. Whistleblowing.** This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor

- 8. Executive Orders.** This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services and to Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Client Agency or Connecticut Department of Administrative Services shall provide a copy of these orders to the Contractor.

**Acceptance of Agreement**

The Provider accepts and will comply with all the terms, provisions and conditions set forth in this agreement, including but not limited to, the services provided, duration of service, and data reporting. The Provider understands that failure to abide by any term, provision, or condition set forth may result in the Department taking corrective action, including termination of this agreement.

**FOR PROVIDER NAMED ON PAGE 1:**

**FOR DEPARTMENT OF CHILDREN AND FAMILIES:**

\_\_\_\_\_  
Authorized Signature

\_\_\_\_\_  
Authorized Agency Official Signature

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

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Date

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Date