

**6.2.1 TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES  
VENDOR SUPPLEMENTAL, SPECIAL & PROGRAMMATIC CONDITIONS  
FOR TREATMENT FOSTER FAMILY CARE (TFFC)**

**SECTION I  
SUPPLEMENTAL CONDITIONS**

There are no Supplemental Conditions that modify the DFPS Vendor Uniform Terms and Conditions.

**SECTION II  
SPECIAL CONDITIONS**

In addition to the DFPS Uniform Terms and Conditions, the Contractor agrees to comply with the following DFPS Vendor Special Conditions.

**A. REMEDIES.**

In addition to any other remedy provided under this Contract or state or federal law, DFPS may impose the following.

- 1. Technical Resolution.** DFPS and Contractor will enter into a joint technical resolution process. Both parties will hold face to face meetings, scan calls or teleconferences where both parties will identify issues, barriers, potential solutions, and implementation strategies to fix noncompliance and performance issues. DFPS will document these sessions and provide Contractor with a final technical guidance document to aid in implementation.
- 2. Corrective Action Plan (CAP).** DFPS will provide the Contractor with a CAP that identifies areas of noncompliance, poor performance, or other deficiencies.
  - a.** Contractor must respond in writing within the timeframes required in the CAP, address each identified defect, and provide an appropriately thorough response to the DFPS for review and approval.
  - b.** Upon receipt of the DFPS's approval, the Contractor must implement and maintain compliance with the requirements of the CAP.
- 3. Placement Action.** DFPS reserves the right to:
  - a.** Temporarily or permanently remove any or all Child subject to the terms of this Contract; and/or
  - b.** Suspend and/or limit any further placements and place additional conditions on the Contractor.
- 4. Suspension.** DFPS may suspend or remove all or any part of the Contract.
- 5. Removal of Staff.** DFPS reserves the right to require Contractor to remove any employee, volunteer, or agent of the Contractor or any subcontractor from the provision of services under this contract or to prohibit any employee, volunteer, or agent of the Contractor or any subcontractor from having direct contact with DFPS referred clients or client records.

- 6. Liquidated Damages.** , Contractor agrees that DFPS may recover liquidated damages as provided below:
- a. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Checkup (also known as Texas Health Steps Checkup).** As required by Texas Human Resources Code §42.0432(b), DFPS will assess liquidated damages when the Contractor fails to ensure that EPSDT checkups are completed.
    - i.** Compliance Requirements are at 40 TAC § 749.1151.
    - ii.** Liquidated damages will be assessed when the child is new to care with DFPS and this child has been in the Contractor’s care 30 days within 90 days of the child’s removal.
    - iii.** \$100 for each instance of non-compliance up to and including the 10<sup>th</sup> instance.
    - iv.** \$150 for each instance of non-compliance after the 10<sup>th</sup> instance.
  - b. Trauma Informed Care (TIC) Training.** DFPS will assess liquidated damages when the Contractor fails to comply with TIC Training.
    - i.** Compliance Requirements are at Sections 5500 - 5540 in the Requirements.
    - ii.** \$250 for each instance of non-compliance up to and including the 10<sup>th</sup> instance
    - iii.** \$500 for each instance of non-compliance after the 10<sup>th</sup> instance.
  - c. Emergency Behavior Intervention (EBI) Training.** DFPS will assess liquidated damages when the Contractor fails to comply with EBI training requirements.
    - i.** Compliance Requirements are at 26 TAC §§749.863, 749.901 and 749.903.
    - ii.** \$250 for each instance of non-compliance up to and including the 10<sup>th</sup> instance.
    - iii.** \$500 for each instance of non-compliance after the 10<sup>th</sup> instance.
  - d. Background History Check Compliance.** DFPS will assess liquidated damages when the Contractor fails to comply with Background History Check requirements.
    - i.** Compliance Requirements are Section VII (C) of the DFPS Vendor Uniform Terms and Conditions, Subchapter F in 26 TAC 745, and Section 2.12 of the Open Enrollment.
    - ii.** \$250 for each instance of non-compliance up to and including the 10<sup>th</sup> instance of non-compliance.
    - iii.** \$500 for each instance of non-compliance after the 10<sup>th</sup> instance of non-compliance.
  - e. Continuous 24-Hour Awake Supervision Compliance.** DFPS will assess liquidated damages when the Contractor fails to provide continuous 24-hour awake supervision to children consistent with requirements described in this Contract and all its incorporated documents, including, but not limited to, Section 1115 Continuous 24-Hour Awake Supervision of the 24-Hour Residential Child Care Requirements. Liquidated damages are found in Appendix V. 24-Hour

Awake Supervision Progressive Intervention and Liquidated Damages of the 24-Hour Residential Child Care Requirements.

**7. Performance Remedy - Safe in Care.** As provided for in Texas Human Resources Code §40.058(f), DFPS will collect financial remedies in instances where Contractor fails to meet the target of 100% for Performance Measure Outcome #1.

- a. Compliance Requirements are in Performance Measure Outcome #1 in Section 6.
- b. On an annual basis following the end of each State of Texas fiscal year, DFPS will collect a remedy that equals the percent of DFPS children in Contractor's care not kept safe (as described in Performance Measure Outcome #1) multiplied by the total amount in contract utilization that DFPS has made to Contractor for the fiscal year. Contract utilization is defined as any payment made under the applicable contract during the months of September through August less the Foster Parent Minimum Reimbursement Funds.
- c. If any disposition of Reason to Believe (RTB) associated with the child's/youth's safety are subsequently overturned, DFPS will return the collected remedy to the Contractor for that overturned RTB disposition.

**8. Liquidated Damages and Remedies Cap.** DFPS will cap all damages and remedies collected under Subsections 6 and 7 above to 10% of the contract utilization amount that DFPS paid to Contractor under this Contract.

**B. PERFORMANCE INCENTIVE.** As provided for in Texas Human Resources Code §40.058(f), DFPS may provide financial incentives in instances where Contractor exceeds the target for the following Performance Measures (See Section 6). Financial incentives are dependent on the Liquidated Damages and Remedies collected by DFPS as provided for in Subsection H above and appropriations.

1. Children are successfully transitioned from Treatment Foster Family Care. (See Performance Measure #2a in Section 6).
2. Children who have been successfully stabilized in Treatment Foster Family Care remain stabilized. (See Performance Measure #2b in Section 6.).

**C. PAYMENTS UNDER STATE PLANS APPROVED UNDER TITLE IV-E AND TANF.**

As applicable, Contractors must seek payment or adjustment to payments in accordance with the time limit specified in 45 Code of Federal Regulations (CFR) 95.1 that provides a two-year (eight fiscal year quarters) time limit for a State to claim Federal financial participation in expenditures under State plans approved under Title IV-E and Temporary Assistance for Needy Families (TANF).

Any invoice or amended invoice that is submitted to DFPS later than seven quarters after the end of the quarter of the expense, will not be processed

unless DFPS determines that submission for payment of the bill to the federal government can be executed within the time limits provided in the CFR.

**D. BACKGROUND HISTORY CHECKS - DISALLOWANCE OF TITLE IV-E FUNDS.**

If this Contract is funded in part or whole by Title IV-E Funds, then during a federal audit, if there is a finding that Contractor has not performed required checks within the timeframes required by the Contract, this finding can result in a disallowance of Title IV-E funds claimed on behalf of the client. In addition to any other remedy under this Contract, DFPS can require the Contractor to reimburse DFPS for such disallowances, including disallowed costs related to foster care maintenance payments, administrative costs and interest.

**E. REPORTING.** The Contractor shall accurately complete cost reports, time studies, Internal Control Structure Questionnaires (ICSQs), Contract Monitoring surveys, and any other reports required and requested by the Department within time frames specified by DFPS. The Contractor must submit annual cost reports as required by 1 TAC §700.7151-7153.

**F. COST REPORT TRAINING.** The Contractor acknowledges and agrees that individuals responsible for preparing the Contractor's cost reports shall:

1. Attend HHSC cost report training in compliance with 1 TAC §700.7151 prior to submitting an annual cost report; and
2. Attach a copy of the preparer's training certificate to each completed cost report.

**G. INSURANCE.**

1. The Contractor will provide DFPS documentation of insurance coverage that meets or exceeds the amount in below and will maintain this insurance coverage and comply with this Section throughout the Contract Term, including any renewals.
  - a. **Commercial General Liability** – \$1,000,000 per occurrence and \$2,000,000 aggregate
  - b. **Professional Liability** – \$1,000,000 per occurrence and \$2,000,000 aggregate
  - c. **Crime Policy (3<sup>rd</sup> Party Endorsement)** – \$250,000
  - d. **Business Automobile Liability (Owned & Hired Endorsements and Non-owned Auto)** – \$1,000,000
2. This insurance coverage will be with insurance companies or equivalent providers that are rated for financial purposes "B" or higher by A.M. Best, as applicable. This insurance company or equivalent provider must be authorized or licensed to do business in the state where the Contractor is located.
3. The Contractor will obtain a Certificate of Insurance or equivalent documentation (hereinafter referred to as "Insurance Document") with the types of coverage and limits carried by Contractor that meets the

requirements in Subsection 1 and provide this Insurance Document to DFPS prior to or upon Contract execution.

4. If the Contractor's insurance coverage required by this Section is renewed, no longer current or there is a material change to the Insurance Document, then the Contractor will provide DFPS with a current Insurance Document. Furthermore, the Contractor agrees to provide this Insurance Document to DFPS in a manner that ensures DFPS has a current Insurance Document on file at all times and will provide additional or requested documentation at any time to DFPS.
5. When an equivalent insurance coverage or Self-Insurance Plan is submitted to satisfy the DFPS insurance coverage requirements in Subsection 1, DFPS may request that additional information be provided by Contractor or Contractor's insurance company or equivalent provider.
6. DFPS has the sole discretion to determine whether an Insurance Document provided to DFPS will be accepted as documentation that the Contractor has met this Section's requirements.
7. DFPS may require the Contractor to provide any additional documentation to meet the requirements of this Section. DFPS may request that the Contractor permit DFPS to contact Contractor's insurance company or equivalent provider directly. The Contractor will provide any documents required by DFPS under this Section without additional expense or delay.

**H. ASSESSMENTS OF PHYSICAL FACILITIES AND OPERATIONS.** The Contractor will allow periodic assessments of its physical facilities and operations, which may include specific homes, by DFPS employees or DFPS authorized representatives. The Contractor's physical facilities and operations will be approved by the DFPS based on assessments prior to and during the Contract Term.

**I. CONTRACT TERMINATION AND END OF CONTRACT TERM.**

In addition to the requirements in the Uniform Terms and Conditions, the following will apply.

1. At the end of the Contract term or other contract termination, the Contractor will, in good faith and in reasonable cooperation with DFPS, aid in the transition to any new arrangement or provider of services.
2. In the event this is not possible to continue to provide services at the end of expiration of the Contract, the Contractor and DFPS will work together to ensure that services are continued or transitioned for the Child in accordance all terms and conditions of this Contract, as long as the Child is eligible for services.
3. DFPS will reimburse the Contractor for any services provided after the date of Contract termination or Contract expiration until all Child are removed from receiving the Contractor's services as long as the Child remains eligible to receive services.

4. DFPS will terminate this Contract if the Contractor is found liable for or has a contract, license, certificate, or permit of any kind revoked for Medicaid fraud.

### **SECTION III - PROGRAMMATIC CONDITIONS**

**Intensive Foster Family Care Services.** If a CPA Contractor has been approved to participate in the Intense Foster Family Care services (IFFC), this approval will be indicated on their Contract and the Contractor agrees to comply with this Section.

- A. DFPS will not pay the Contractor the Intense Level rate until the Contractor has complied with the process referenced below in this Section.
- B. Approval Procedures for Children with Primary Medical Needs (PMN). For foster homes who are verified to provide residential childcare for children with PMN, the following policy and procedure will be utilized.
  1. Within 30 days of placement or an increase to the Intense Service Level for a Child who is already placed in a foster home verified for the Intense Service Level and who has Treatment Services as PMN, the Contractor must submit the following to the Designated CPS State Office Placement Program Specialist:
    - a. The foster home study and any addendums with verification date;
    - b. Treatment plan for the child;
    - c. Plan to meet the Intense Services Level indicators;
    - d. Supervision plan; and
    - e. Intense Service Level staffing plan.
  2. The Designated CPS State Office Placement Program Specialist notifies the State Office Foster Care Billing Program Specialist who updates the foster home's IMPACT verification.
  3. The Contractor will be paid the Intense Service Level foster care rate for the placement of the Child in accordance with the date of foster home verification.